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CITY COUNCIL

CITY OF WICHITA KANSAS

City Council Meeting 09:00 a.m. June 10, 2014

City Council Chambers 455 North Main

OPENING OF REGULAR MEETING

 Call to Order
 Invocation
 Pledge of Allegiance
 Approve the minutes of the regular meeting on June 3, 2014

AWARDS AND PROCLAMATIONS

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Darrell Atteberry

Awards:

Certificates of Achievement for Excellence in Financial Reporting (City and Pension Reporting) Certificate of Outstanding Achievement in Popular Annual Financial Reporting

I. PUBLIC AGENDA

NOTICE:No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a "first-come, first-served" basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city manager prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

- 1. Shirley Mansfield Library and Century II.
- 2. Runyard Paine Reversal of condemnation of 1947 South Water.

II. CONSENT AGENDA ITEMS (1 THROUGH 24)

NOTICE: Items listed under the "Consent Agendas" will be enacted by one motion with no separate discussion. If discussion on an item is desired, the item will be removed from the "Consent Agendas" and considered separately

(The Council will be considering the City Council Consent Agenda as well as the Planning, Housing, and Airport Consent Agendas. Please see "ATTACHMENT 1 – CONSENT AGENDA ITEMS" for a listing of all Consent Agenda Items.)

COUNCIL BUSINESS

III. UNFINISHED COUNCIL BUSINESS

None

IV. NEW COUNCIL BUSINESS

1. Request for Letter of Intent Extension for Industrial Revenue Bonds, Residences at Linwood, LLC. (District III)

RECOMMENDED ACTION: Approve an extension to the Letter of Intent for Industrial Revenue Bonds to The

Residences at Linwood, LLC through June 30, 2016 and increase the not-to-

exceed amount to \$7,000,000.

2. <u>Extension of IRB Exemption, Pawnee Industrial LLC. (District IV)</u>

RECOMMENDED ACTION: Extend the tax exemption on the IRB-financed property tax for a second five-

year term, based on the prior incentive policy.

3. .Request for Letter of Intent for Industrial Revenue Bonds, Pawnee Industrial II, LLC. (District VI)

RECOMMENDED ACTION: Close the public hearing and adopt the Resolution of Intent which: 1) authorizes

the Mayor to sign a Letter of Intent for Pawnee Industrial II, LLC for Industrial Revenue Bonds in an amount not-to-exceed \$10,350,000, subject to the standard Letter of Intent Conditions; 2) approves a 100% tax abatement on all bond-financed property for an initial five-year period plus an additional five-years following City Council review; 3) authorizes staff to apply for a sales tax exemption; 4) authorizes the Mayor to execute bond purchase agreements for each series of bonds; 5) authorizes the filing of required information statements with the State Board of Tax Appeals; and 6) authorizes the necessary signatures and other actions necessary to accomplish the intent of the Resolution.

and other actions necessary to accomplish the intent of the Resolution.

4. <u>Amendment of State Office Building Wrap Around Lease between the City of Wichita and Sedgwick County and</u> the Wichita Public Building Commission. (District I)

RECOMMENDED ACTION: Adopt the resolution authorizing the execution of the Second Supplemental Lease

Agreement between the Wichita Public Building Commission and the City of

Wichita and Sedgwick County.

5. <u>Amendment to the 2013 Health Care Facilities Refunding and Improvement Revenue Bond Letter of Intent,</u> Presbyterian Manors, Inc. (Districts I and VI)

RECOMMENDED ACTION: Close the public hearing and adopt the Resolution authorizing amendment of the

Letter of Intent to issue \$125,000,000 in Industrial Revenue Bonds for

Presbyterian Manor, Inc., approving a 100% IRB property tax abatement for the

new corporate headquarters, subject to Payment-In-Lieu-Of-Taxes and

authorizing the necessary signatures.

6. Ordinance Amending Sections 3.72.010, 3.72.015, 3.72.130 and 3.72.160 and Repealing Licensing Provisions Related to Firearms Permit for Private Security Officers.

RECOMMENDED ACTION: Place the ordinance on first reading and authorize the necessary signatures.

7. Ordinance Amending Sections 5.88.010 and 5.88.030 and Repealing Chapter 5.89 Relating to the Possession of Firearms.

RECOMMENDED ACTION: Place the ordinance on first reading and authorize the necessary signatures.

8. Water Conservation Rebate Program.

RECOMMENDED ACTION: Authorize the \$450,000 Water Conservation Rebate Program.

9. Water Meter Upgrade Program.

RECOMMENDED ACTION: Approve the contract with National Meter and Automation, Inc., adopt the

bonding resolution, and authorize the necessary signatures.

10. New Golf Division POS Software. (Districts I, III, IV, VI)

RECOMMENDED ACTION: Approve the contract, approve the funding and authorize the necessary

signatures.

11. Amendment of Downtown Development Incentives Policy. (Districts I and VI)

RECOMMENDED ACTION: Adopt the resolution amending the Downtown Development Incentives Policy

and authorize the necessary signatures.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

V. NON-CONSENT PLANNING AGENDA

None

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

VI. NON-CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

VII. NON-CONSENT AIRPORT AGENDA

COUNCIL AGENDA

VIII. COUNCIL MEMBER AGENDA

 Approval of travel expenses for Council Member James Clendenin and Council Member Lavonta Williams to attend The National League of Cities 2014 Summer Policy Forum for the Policy and Advocacy Steering Committees in St. Paul, MN, July 24-26, 2014.

RECOMMENDED ACTION: Approve the expenditures.

IX. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

Adjournment

(ATTACHMENT 1 – CONSENT AGENDA ITEMS)

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts

a. Report of Board of Bids and Contracts dated June 9, 2014.

RECOMMENDED ACTION: Receive and file report; approve Contracts;

authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

Renewal	<u>2014</u>	(Consumption on Premises)
Concepcion Acosta	Taqueria El Paisa**	2227 North Arkansas Avenue
D. I	2014	(C (C CC)
Renewal	2014	(Consumption off Premises)
Cari Spainhour	Quik Trip #313***	^3164 South Hillside
Cari Spainhour	Quik Trip #320***	1021 West 31st South
Cari Spainhour	Quik Trip #321***	6011 West Central
Cari Spainhour	Quik Trip #325***	1414 North Oliver
Cari Spainhour	Quik Trip #328***	2801 South Hydraulic
Cari Spainhour	Quik Trip #329***	5602 East Harry
Cari Spainhour	Quik Trip #343***	242 South Tyler
Cari Spainhour	Quik Trip #345***	4020 South Meridian
Cari Spainhour	Quik Trip #347***	1532 South Seneca
Cari Spainhour	Quik Trip #349***	1112 West Douglas
Cari Spainhour	Quik Trip #353***	110 South Rock Road
Cari Spainhour	Quik Trip #356***	4808 South Hydraulic
Cari Spainhour	Quik Trip #358***	7120 West 21st Street North
Cari Spainhour	Quik Trip #360***	3933 West 13th Street
Cari Spainhour	Quik Trip #366***	1620 South Webb Road
Cari Spainhour	Quik Trip #368***	626 West 21st Street North
Cari Spainhour	Quik Trip #372***	3126 East Pawnee
Cari Spainhour	Quik Trip #373***	1610 East Lincoln
Cari Spainhour	Quik Trip #374***	10315 West 13th Street
Cari Spainhour	Quik Trip #376***	2106 South Rock Road
Cari Spainhour	Quik Trip #378***	5611 South Broadway
Cari Spainhour	Quik Trip #383***	11223 East Central
Cari Spainhour	Quik Trip #384***	2510 West Pawnee
Cari Spainhour	Quik Trip #386***	1010 East Douglas Avenue
Cari Spainhour	Quik Trip #388***	7991 East 37th Street North
Cari Spainhour	Quik Trip #389***	4730 East Central
Cari Spainhour	Quik Trip #391***	730 North Broadway
Dalsukh Parmar	Friends Corner***	1131 East 47th Street South
Sazzad K Khandaker	KD Shop***	10409 West Maple
Sallau K Kiiaiiuakti	KD Slioh	10+09 west maple

^{*} Tavern (less than 50% of gross revenues from sale of food)

^{**}General/Restaurant (need 50% or more gross revenue from sale of food)

^{***}Retailer (Grocery stores, convenience stores, etc.)

Page 6

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. <u>Preliminary Estimates:</u>

a. Preliminary Estimates.

RECOMMENDED ACTION: Receive and file.

4. Petitions for Public Improvements:

a. Petitions for Improvements to Emerald Bay Estates Second Addition. (District VI)

RECOMMENDED ACTION: Approve Petitions; adopt resolutions.

5. Agreements/Contracts:

a. East Kellogg from Cypress to Wiedemann - Relocation Agreements with Kansas Gas Service. (District II)

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

6. Change Orders:

a. Change Order No. 1 for 29th Street North, Ridge to Hoover. (Districts V and VI)

RECOMMENDED ACTION: Approve the Change Orders and authorize the necessary signatures.

7. Minutes of Advisory Boards/Commissions

Wichita Transit Advisory Board, April 25, 2014 Wichita Pedestrian Steering Committee, May 27, 2014

RECOMMENDED ACTION: Receive and file.

8. Purchase Option, Presbyterian Manors, Inc. (District I)

RECOMMENDED ACTION: Adopt the Resolution approving the Special Warranty Deed, Bill of Sale,

Release of Lease Agreement and to convey the property to Presbyterian Manors,

Inc. and authorize the necessary signatures.

9. Contracts and Agreements for May 2014.

RECOMMENDED ACTION: Receive and file.

10. Report on Claims for April 2014.

RECOMMENDED ACTION: Receive and file.

11. Public Art Maintenance Contract.

RECOMMENDED ACTION: Approve the contract between the City of Wichita (City) and Gotta Corporation

in an amount not to exceed \$50,000 annually.

12. Long Range Transportation Plan Project/Program Solicitation Consultant Contract.

RECOMMENDED ACTION: Approve the contract to complete the Long Range Transportation Plan

Project/Program Solicitation consulting services and authorize the necessary

signatures.

13. Nuisance Abatement Assessments, Lot Clean Up. (Districts I, III, IV, V and VI)

RECOMMENDED ACTION: Approve the proposed assessment and place the ordinance on first reading.

14. <u>Payment of Condemnation Award, Appraisers Fees and Court Costs in Condemnation Matter to Acquire Property</u> for Public Right of Way for the Completion of the Interchange at K-96 and Greenwich Road. (District II)

RECOMMENDED ACTION: Authorize payment to the Clerk of the District Court in the amount of

\$183,820.16 for acquisition of property and easements condemned in the subject

case.

15. Engineering Design of ASR Water Supply Option - Contract Amendment.

RECOMMENDED ACTION: Approve the amendment and authorize the necessary signatures.

16. Second Reading Ordinances: (First Read June 3, 2014)

a. II-16. Second Reading Ordinances.

RECOMMENDED ACTION: Adopt the Ordinances.

II. CONSENT PLANNING AGENDA ITEMS

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

17. *SUB2014-00015 -- Plat of David and Palmer Addition located West of Broadway, on the South Side of 29th Street North. (District VI)

RECOMMENDED ACTION: Approve the documents and plat, authorize the necessary signatures, and place

the Ordinance on first reading. Publication of the Ordinance should be withheld

until the plat is recorded with the Register of Deeds.

- 18. *SUB2014-00018 -- Plat of Sonic Addition located on the East side of Broadway, North of Kellogg. (District I)

 RECOMMENDED ACTION: Approve the documents and plat and authorize the necessary signatures.
- 19. *VAC2013-00011 Request to Vacate Portions of Platted Access Control on Property Generally Located South of 19th Street North on the West Side of Webb Road. (District II)

RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

20. *VAC2014-00001 - Request to Vacate a Portion of Platted Access Control and the Plattor's Text on Property Generally Located Midway Between 119th and 135th Streets West on the South Side of 21st Street North.

(District V)

RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

21. *VAC2014-00011 - Request to Vacate a Platted Street Right-of-Way on Property Generally Located West of Meridian Avenue and north of Pawnee Avenue. (District IV)

RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

II. CONSENT HOUSING AGENDA ITEMS

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

None

II. CONSENT AIRPORT AGENDA ITEMS

None

- NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.
 - 22. *Seaport Airlines, Inc. Non-signatory Use and Lease Agreement Wichita Mid-Continent Airport.

RECOMMENDED ACTION: Approve the agreement and authorize the necessary signatures.

- 23. *UPS Supply Chain Solutions, Inc. Cargo Building, Suite 900 Wichita Mid-Continent Airport.
 - RECOMMENDED ACTION: Approve the supplemental agreement and authorize the necessary signatures.
- 24. *United Parcel Service Cargo Building, Suite 1000 Wichita Mid-Continent Airport.

RECOMMENDED ACTION: Approve the supplemental agreement and authorize the necessary signatures.

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: Request for Letter of Intent Extension for Industrial Revenue Bonds (Residences at

Linwood, LLC) (District III)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Approve the extension of the Letter of Intent and the increase in the not-to-exceed amount.

Background: On June 19, 2012, the City Council approved a one year Letter of Intent to issue Industrial Revenue Bonds (IRBs) in an amount not-to-exceed \$5,000,000 for the acquisition and renovation of the first phase of The Residences at Linwood, an apartment complex located at 2002 S. Hydraulic. The first phase of the facility is a 184-unit apartment complex consisting of four-plexes. An extension of the Letter of Intent was granted on May 7, 2013 through June 30, 2014.

The Residences at Linwood, LLC (Linwood) is requesting a two year extension of the Letter of Intent through June 30, 2016 and requesting the project be financed with a single bond issue in an amount not-to-exceed \$7,000,000.

<u>Analysis:</u> Linwood purchased the former Linwood Apartments in December 2011. The facility encompasses single-story brick four-plexes on 21 acres. The request for the original Letter of Intent was for the first of two phases of renovation. Linwood intended to request a second Letter of Intent for a second issuance of bonds when it prepared for the second phase.

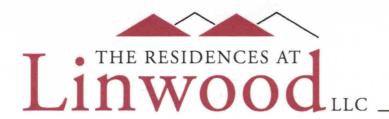
Linwood has decided to complete the project and finance it with a single bond issue as a means of cost savings. It is therefore requesting the not-to-exceed amount be increased to \$7,000,000 to cover the acquisition of all materials and equipment necessary for the construction and renovation of 90 four-plexes for a total of 360 one-bedroom apartments.

Financial Considerations: Bonds will be privately placed with a principal of the applicant, Murfin, Inc. Linwood agrees to pay all costs of issuing the bonds and agrees to pay the City's \$2,500 annual IRB administrative fee for the term of the bonds. Linwood is not requesting a property tax abatement in conjunction with the IRBs. The project will qualify for a sales tax exemption on bond-financed purchases.

<u>Legal Considerations:</u> The law firm of Kutak Rock, LLP will serve as bond counsel in the transaction. The form of bond documents shall be subject to review and approval by the Law Department prior to the issuance of any bonds. Linwood agrees to comply with the City's Standard Letter of Intent Conditions.

Recommendations/Actions: It is recommended that the City Council approve an extension to the Letter of Intent for Industrial Revenue Bonds to The Residences at Linwood, LLC through June 30, 2016 and increase the not-to-exceed amount to \$7,000,000.

Attachments: Request for Letter of Intent extension



June 2nd, 2014

Mr. Allen Bell Director of Urban Development City of Wichita, Kansas 455 N. Main 13th Floor Wichita Ks, 67202

Dear Mr. Bell.

On June 21st, 2012 the City of Wichita through the mayor, Carl Brewer executed a letter of intent to issue an IRB in an amount not to exceed \$5,000,000.00 based on unanimous approval of the City Council passed on June19th, 2012 and was extended May 7th, 2013. The term of the letter of intent ends June 30th, 2014. This letter is to formally request an extension of the letter of intent to June 30th, 2016 and to amend the amount of bond from \$5,000,000.00 to \$7,000,000.00 to include the second phase of the project.

As you may recall phase one of this project involved the rehabilitation of 180 multi-family units in SE Wichita. As was presented to the Council the project is utilizing IRS Section 42 low income and historic tax credits. Both have been critical to the success of the project. At the beginning of the project the historic process took much longer which delayed our project considerably. In fact our plan as presented to the State of Kansas and the National Park Service was in process for almost a year before phase one renovations could substantially begin. We finally received a written approval of our plan and were able to move forward. We have invested millions of dollars into the area and made significant progress on the renovations and are nearly complete with phase one. Due to this investment there has been a significant difference in the community surrounding the Linwood Park area and the SE part of Wichita. We request an extension of the letter of intent for 24 months through June 30th, 2016 and an amendment of the letter to raise the bond amount to \$7,000,000.00 to include both phase one and two, a total of 360 units and the full completion of the project.

Secondly, as we are purchasing our own bond (funding our own project) we would prefer to issue and retire the bond at the same time. By extending the letter of intent our intention is to complete the entire project and upon completion have a closing in which the bond is issued and retired simultaneously. Obviously this process makes it easier on all involved and my understanding still fulfills all the requirements of the City to issue an IRB.

We will continue to comply with all requirements of the letter of intent and will meet all obligations as expected. We would appreciate your consideration of our request as we are working hard to complete the project and in turn improve the community.

Thank you,

Brent Hurst

The Residences at Linwood LLC

2002 S. Hydraulic Wichita Ks 67211

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: Extension of IRB Exemption (Pawnee Industrial, LLC) (District IV)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Approve the second five year ad valorem tax exemption.

Background: On December 9, 2008, the City Council approved the issuance of Industrial Revenue Bonds (IRBs) in an amount not-to-exceed \$4.5 million for Pawnee Industrial, LLC, a joint development venture by Steve Barrett and Herbert Krumsick. The City Council also approved a 100% five-plus-five year property tax abatement on bond-financed property. The bonds were used to finance the construction of a speculative manufacturing and warehouse facility located at Pawnee and Custer in Southwest Wichita. The developers are now requesting approval of the second five year tax exemption.

<u>Analysis</u>: Bond proceeds were used to finance the costs of construction of a 143,000 square foot speculative manufacturing and warehouse facility located at 3002 W. Pawnee. The facility was built to the Leadership in Energy and Environmental Design (LEED) standards. Pawnee Industrial, LLC has leased the facility to four users. At the time of the issuance of bonds, Pawnee Industrial anticipated the addition of 35 net new jobs over five years with a minimum average wage of \$29,786 annually as a result of the project. The project exceeded the five-year thresholds as stated below.

 Z008 Projections
 Current Levels

 Capital Investment:
 \$4,500,000
 \$5,710,292

 Job Creation:
 35
 76

 Annual Salaries:
 \$29,786
 \$31,618

<u>Financial Considerations</u>: Pawnee Industrial, LLC has paid the City's \$2,500 annual IRB administrative fee for the term of the bonds. An updated cost/benefit analysis report completed using the fiscal and economic impact model of Wichita State University's Center for Economic Development and Business Research reflects cost/benefit ratios as follows:

City of Wichita General Fund 1.18 to one Sedgwick County 1.11 to one USD 259 1.00 to one State of Kansas 7.20 to one

The provision of a minimum ratio of benefits to costs of 1.3 to one that is stated in the current economic development incentive policy did not exist at the time of the issuance of the IRBs.

<u>Legal Considerations</u>: Section 7.5 of the lease provides the City Council the right to terminate the exemption at the end of the first five-year period.

Recommendations/Actions: It is recommended that City Council extend the tax exemption on the IRB-financed property for a second five-year term, based on the prior incentive policy.

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: Request for Letter of Intent for Industrial Revenue Bonds (Pawnee Industrial II,

LLC) (District VI)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Close the public hearing and adopt the Resolution of Intent.

The City has received an application for a Letter of Intent to issue Industrial Revenue Bonds (IRBs) for Pawnee Industrial II, LLC, a development venture by Steve Barrett and Ivan Crossland. The bonds will be used to finance the construction of a manufacturing and warehouse facility located at 29th Street North and Ohio Street in North Wichita.

Pawnee Industrial II, LLC is requesting the issuance of a two year letter of intent for IRBs in an amount not to exceed \$10,350,000. Pawnee Industrial II, LLC is also requesting the City Council's approval of 100% five-year tax exemption on the IRB-financed real property improvements with the second five year exemption based upon actual performance and subject to City Council approval.

Analysis: Bond proceeds will be used to finance the costs of acquiring 13 acres of land and constructing approximately 250,000 square feet of speculative manufacturing and warehouse space located at the northeast corner of 29th Street North and Ohio Street. The project will be split between two buildings that will provide dock and bay doors for access. The first building is designed to provide approximately 108,000 square feet and is expandable by 50,000 square feet. A second building would follow that would add an additional 108,000 square feet. Pawnee Industrial II, LLC plans to lease the facilities to one or more users depending on space requirements of potential tenants. Pawnee Industrial II, LLC anticipates the addition of 138 new jobs with an average wage of \$52,127 annually as a result of the project.

The Wichita area has continually experienced a shortage of available industrial space in the real estate market. The construction of this facility will significantly increase the inventory of available manufacturing and warehouse space. Industrial space that is immediately available is a critical decision factor for many companies with expansion and/or relocation plans. Part of the development group for Pawnee Industrial II, LLC is involved in Pawnee Industrial, LLC which was approved for a tax abatement on the construction of a comparable speculative industrial building in 2008. That 143,000 square foot building is 100% occupied today and has exceeded the 2008 projections for capital investment and job creation.

The current Economic Development Incentive Policy which governs all incentives offered by the City of Wichita and Sedgwick County was adopted in 2004 and amended in 2012. The policy in place prior to 2004 allowed for property tax abatement on speculative buildings; however the 2004 policy was silent on the qualifications required of speculative buildings for property tax abatement. On August 14, 2012, the City Council approved an amended Economic Development policy that included provisions for a tax abatement on speculative industrial/warehouse buildings.

Pawnee Industrial II, LLC is the second speculative industrial building to be considered under this new policy provision, under which the project will qualify for 100% abatement for an initial five years. At the

Pawnee Industrial II, LLC Letter of Intent June 10, 2014 Page 2

end of the first five years of tax abatement, a compliance review will be conducted to determine the tax abatement for the second five years. The percentage of tax abatement for the second five years will be based on total capital investment and the number of net new jobs actually created by the companies occupying space in the building at that time. The abatement percentage may need to be further adjusted based on the average annual salaries of all jobs located in the building, compared to the North American Classification System (NAICS) average in our market and the resulting cost-benefit ratios, pursuant to the Economic Development Incentive Policy.

The City's contract bond counsel firm, Gilmore & Bell, P.C., will serve as bond counsel in the transaction. Pawnee Industrial II, LLC agrees to comply with the City's Standard Letter of Intent Conditions.

<u>Financial Considerations</u>: Pawnee Industrial II, LLC agrees to pay all costs of the City relative to the issuance of the bonds. The company also agrees to pay the City's \$2,500 annual IRB administrative fee for the term of the bonds.

Based on the 2013 mill levy, the estimated tax value of exempted property for the first full year of the completed project would be approximately \$312,055. This estimate assumes that 100% of the cost of improvements to real property will be reflected in a dollar-for-dollar increase in property value. The actual increase in valuation, if any, will be determined by the Sedgwick County Appraisers Office in the future as part of its on-going reappraisal process. The value of a 100% real property tax exemption as applicable to taxing jurisdictions is:

City	\$ 84,117	State	\$ 3,881
County	\$ 76,013	USD 259	\$ 148,044

Approval of the second five-year abatement period will be subject to compliance with job creation and average wage commitment, capital investment commitment and a requirement that at least 51% of exports are stored/shipped to end-users outside the Wichita MSA as required by the current incentive policy.

The cost/benefit analysis report completed using the fiscal and economic impact model of Wichita State University's Center for Economic Development and Business Research reflects cost/benefit ratios as follows:

City of Wichita General Fund	1.30 to one
Sedgwick County	1.18 to one
USD 259	1.00 to one
State of Kansas	12.11 to one

<u>Legal Considerations</u>: Bond documents required for the issuance of the bonds will be prepared by bond counsel and will be subject to review and approval as to form by the Law Department prior to the issuance of bonds.

Recommendations/Actions: It is recommended that the City Council close the public hearing and adopt the Resolution of Intent which: (1) authorizes the Mayor to sign a Letter of Intent for Pawnee Industrial II, LLC for Industrial Revenue Bonds in an amount not-to-exceed \$10,350,000, subject to the standard Letter of Intent Conditions; (2) approves a 100% tax abatement on all bond-financed property for an initial five-year period plus an additional five-years following City Council review; (3) authorizes staff to apply for a sales tax exemption; (4) authorizes the Mayor to execute bond purchase agreements for each series of bonds; (5) authorizes the filing of required information statements with the State Board of Tax Appeals; and (6) authorizes the necessary signatures and other actions necessary to accomplish the intent of the Resolution.

Attachments: Letter of Intent Application, Resolution of Intent

Industrial Revenue Bond Application

Pawnee Industrial II, LLC (Tenant)

To Be Determined (Sub-Tenant)

City of Wichita, Kansas

April 9, 2014

PAWNEE INDUSTRIAL II, LLC

April 9, 2014

Mayor Carl Brewer and Wichita City Council Members City of Wichita, City Hall 455 N. Main Wichita, KS 67202

RE: APPROVAL OF AN ESTIMATED \$10,350,000 of CITY OF WICHITA, KANSAS, TAXABLE INDUSTRIAL REVENUE BONDS

Dear Mayor Brewer and Wichita City Council,

We are writing to request your support for the issuance of approximately \$10,350,000 of City of Wichita, Kansas Taxable Industrial Revenue Bonds. We will use the Bonds to finance the purchase of land and the construction of two (2) buildings containing approximately 250,000 square feet of space in the aggregate. The buildings will be used for industrial and distribution warehouses. The buildings will be constructed on a speculative basis and the Bonds will be issued as a part of the City's speculative industrial building program.

The issuance of Bonds and the receipt of the economic incentives available in connection therewith are critical in order to allow Pawnee Industrial II, LLC to proceed with the purchase of the land and construction of the speculative industrial buildings. Wichita currently has very little modern industrial space on the market for lease, which in turn acts as a hindrance for economic growth. Many national companies looking for space for their products and employees simply pass Wichita over as they are unwilling or unable to wait the time required for a facility to be planned and built. Local brokers are reporting that our community has little speculative projects in development or on the horizon that would help relieve the lack of space. We are excited to step in and propose this Project and we are confident the Project will have a very positive economic effect for the City of Wichita. Our proposed facility will meet all modern standards for use and efficiency and will be located in the heart of Wichita's industrial corridor near 29th Street North and Ohio.

We will be available for any questions you may have regarding our request and look forward to working with you. Thank you in advance for your time and consideration. I think you will find this project addresses a critical need and is very beneficial to the City of Wichita.

Regards,

Pawnee Industrial II, LLC

Ivan Crossland, Jr., Managing Member

1. Name and Addresses of Applicant:

Tenant: Pawnee Industrial II, LLC

150 N. Market Wichita, KS 67202

Telephone: (316) 262-6400 Facsimile: (316) 265-9395 Attention: Ivan Crossland, Jr.

Sub-Tenant: TO BE DETERMINED

Proposed Address: Pawnee Industrial II, LLC

N.E. Corner of 29th Street and Ohio

Wichita, Kansas

2. General description of the business of Applicant:

Pawnee Industrial II, LLC is a newly incorporated Kansas limited liability company that was formed to develop and own the proposed facilities. The members of Pawnee Industrial II, LLC, are entities owned and managed by Ivan Crossland, Jr. and other members of the Crossland family, Steven R. Barrett, and Herbert L. Krumsick, all of whom have a successful history of constructing, developing and operating projects such as this one. Because Pawnee Industrial II, LLC, is a newly formed company it has no historical operating or financial information available. Consequently, the Bonds will be placed with a bank that has a thorough knowledge of the financial position of Pawnee Industrial II, LLC, and its members.

Many of the members of the ownership group for Pawnee Industrial II, LLC are also affiliated with Pawnee Industrial, LLC which built the first speculative building financed with the issuance of the City's Taxable Industrial Revenue Bonds in December of 2008. The 143,000 square foot building constructed by Pawnee Industrial, LLC in 2008 has been 100% leased since 2010.

3. Members of Pawnee Industrial II, LLC:

Crossland Holding Co. II, LLC

Ivan Crossland, Jr. - Managing Member

Mr. Crossland has 37 years of commercial construction experience. He has been CEO of Crossland Construction Company since 2002.

SRB Kansas, LLC

Steven R. Barrett - Member

Mr. Barrett has over 24 years in commercial investment real estate experience, featuring investments, development and brokerage.

Hallelujah Trust

Herbert L. Krumsick - Trustee

Mr. Krumsick has more than 40 years experience in commercial investment real estate and has developed, purchased and/or sold in excess of \$850,000,000 of commercial investment property during his career. Additionally, Mr. Krumsick has been a partner and real estate manager for three very successful investors and has been a consultant regarding the real estate investments of several prominent families in the State of Kansas.

4. General description of the proposed project:

The project will consist of the purchase of land and the construction of two (2) separate buildings containing approximately 250,000 square feet of space in the aggregate (the "Project"). A preliminary site plan of the Project site and preliminary elevations showing the anticipated exterior of the buildings are attached hereto as Exhibits "A" and "A-1". Because there are currently no tenants, this project will be built on a speculative basis with the intent of bringing in national and regional companies and jobs to the City of Wichita. At this time it is anticipated that the two (2) buildings will be constructed in stages over a period of a couple of years. By adding 250,000 square feet of move-in ready industrial and distribution warehouse space to the local market, we believe we will help achieve one of the stated objectives of the Greater Wichita Economic Development Council (GWEDC).

The building is to be located on the Northeast corner of 29th Street and Ohio, will consist of 50' x 54' bay spacing, 16 dock high doors, three 14' x 14' over head doors, 30' clear ceiling height, and provide for approximately 60 parking spaces. The building will be built to LEED/Green standards. The project is being marketed by J.P. Weigand and Sons, Inc.)

5. Bond Amount and Specific Incentives Requested:

We are requesting the issuance of approximately \$10,350,000 in City of Wichita, Kansas Taxable Industrial Revenue Bonds (Pawnee Industrial II, LLC, Warehouse Project). Referred to herein as the "Bonds".

At this time we are requesting a ten (10) year, 100% property tax abatement for that portion of the Project purchased, constructed and financed with the Bonds and a sales tax exemption in connection with the purchases of materials and equipment used in the construction and equipping of the Project.

6. Benefits to the City of Wichita:

By granting a ten (10) year property tax abatement for the Project and the sales tax exemption in connection with the purchase of the building materials and equipment used to construct and equip the project, the City will be providing the economic incentives to Pawnee Industrial II, LLC that are necessary to allow it to purchase and construct the Project which will in turn help the City to receive future economic benefits. Currently the land sits vacant and generates very little tax or economic benefit. We believe the City has much to gain and nothing to lose by approving our request. Given its location, a state-of-the-art industrial building will be very attractive to many outside businesses looking for an available facility in the Midwest. Very few outside companies are willing to come to Wichita if it entails waiting a year or more for land to be located, acquired, and developed. The businesses that will lease the buildings will provide new jobs to the City and significant property tax proceeds after the abatement period ends. As is the case with most of the industrial and warehouse buildings in the area, it will not be uncommon for it to remain a viable facility for forty (40) plus years. It should also be noted that this project falls in lockstep with publicly stated goals of the City of Wichita and the Greater Wichita Economic Development Council.

There has been a recognized need in the community for the availability of such industrial and distribution warehouse space for some time. The need for this type of facility has been

publicly acknowledged by the City. This project will be a great benefit to the economic development efforts of the City.

7. Detailed breakdown of proposed costs:

Land: \$1,050,000

Site Work &

Building: \$10,350,000 TOTAL: \$11,400,000

8. Compliance with City Requirements:

The Applicant and the Project will not have an adverse effect on the ambient air quality of the City or Sedgwick County or the environment in general. The Applicant and Project will comply with all applicable policies and requirements of the City relating to environmental matters. The Applicant and Project will also comply with all policies of the City required in connection with the issuance of the Bonds, including, policies pertaining to equal employment opportunity.

9. Name and address of Bond Counsel:

Name: Gilmore & Bell

Address: 100 N. Main, Suite 600 Telephone: (316) 267-2091

Fax: (316) 262-6523 Attention: Joe Norton

10. Name and address of Applicant Counsel:

Hinkle Law Firm LLC 8621 E. 21st N., Suite 200 Wichita, KS 67206-2991

Telephone: (316) 631-3120

Fax: (316) 631-1720 Attention: Dale Ward

11. Payment for Services

Pawnee Industrial II, LLC agrees to pay to the City all costs relative to the issuance of the Bonds. In addition we agree to make payments of \$2,500 per year to the City commencing one (1) year after delivery of the Bonds.

12. Sale of Bonds

The Bonds will be placed to a local bank that has thorough knowledge of Pawnee Industrial II, LLC and its members.

13. Summary

To permit the Applicant to finalize the financing and plans for the Project, it is requested at this time that the City Council authorize the Mayor to execute a Letter of Intent for and on

behalf of the City wherein the City declares its intent to issue approximately \$10,350,000 of its City of Wichita, Kansas, Taxable Industrial Revenue Bonds, for the purposes described above.

The Applicant is aware that such a Letter of Intent is only an indication of the City to issue the proposed Bonds to assist in the financing of the Project, and that such Letter of Intent is subject in all respects to the governing body's final approval of the terms and provisions of the Bond Resolution, Trust Indenture, Lease Agreement, Guaranty Agreement, and other related documents. However, upon issuance of the Letter of Intent, the Applicant is prepared to proceed in reliance thereon.

Should there be any questions or requests for further information in the course of the City's evaluation of this Application, we will be pleased to promptly respond thereto.

Respectfully submitted,

On behalf of Pawnee Industrial II, LLC

Ivan Crossland, Jr., Managing Member

RESOLUTION NO. 14-155

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS DETERMINING THE ADVISABILITY OF ISSUING INDUSTRIAL REVENUE BONDS FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF INDUSTRIAL WAREHOUSE AND DISTRIBUTION FACILITIES TO BE LOCATED IN SAID CITY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State of Kansas (the "State"); and

WHEREAS, the City Council (the "Governing Body") of the City desires to promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State; and

WHEREAS, pursuant to the provisions of the Kansas Economic Development Revenue Bond Act, as amended and codified in K.S.A. 12-1740 *et seq.* (the "Act"), the City is authorized to issue revenue bonds for such purposes; and

WHEREAS, the Governing Body determines it to be advisable and in the interest and for the welfare of the City and its inhabitants that revenue bonds of the City be authorized and issued, in one or more series, to provide funds to pay the costs of the acquisition, construction and equipping of industrial warehouse and distribution facilities (the "Project") to be located in the City and to be leased by the City to Pawnee Industrial II, LLC, a Kansas limited liability company (the "Tenant").

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Public Purpose. The Governing Body hereby finds and determines that the Project will promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State.

Section 2. Authorization to Acquire Project; Intent to Issue Bonds. The City is hereby authorized to proceed with the acquisition, construction and equipping of the Project and to issue its revenue bonds, in one or more series, in an aggregate principal amount not to exceed \$10,350,000 (the "Bonds") to pay the costs thereof, subject to satisfaction of the conditions of issuance set forth herein.

Section 3. Conditions to Issuance of Bonds. The issuance of the Bonds is subject to: (a) the Tenant's written acceptance of a Letter of Intent containing the City's conditions to the issuance of the Bonds in accordance with the City's Economic Development Incentive Policy (the "Letter of Intent"); (b) the successful negotiation and sale of the Bonds to a purchaser or purchasers to be determined by the Tenant and acceptable to the City (the "Purchaser"), which sale shall be the responsibility of the Tenant and not the City; (c) the receipt of the approving legal opinion of Gilmore & Bell, P.C. ("Bond Counsel") in form acceptable to the City, the Tenant and the Purchaser; (d) the obtaining of all necessary governmental approvals to the issuance of the Bonds; and (e) the commitment to and payment by the Tenant or Purchaser

of all expenses relating to the issuance of the Bonds, including, but not limited to: (i) expenses of the City and the City Attorney; (ii) any underwriting or placement fees and expenses; (iii) all legal fees and expenses of Bond Counsel; and (iv) all recording and filing fees, including fees of the Kansas Court of Tax Appeals.

Section 4. Property Tax Exemption. The Governing Body hereby determines that pursuant to the provisions of K.S.A. 79-201a *Twenty-Fourth* the Project, to the extent purchased or constructed with the proceeds of the Bonds, should be eligible for an exemption from payment of ad valorem property taxes for a period up to ten calendar years commencing with the year following the year in which the Bonds are issued, provided proper application is made therefor. The Governing Body hereby conditionally approves a 100% ad valorem property tax exemption on the Bond-financed property, for a five year term, with an additional five year term to be considered thereafter, at the discretion of the Governing Body, all subject to the Tenant's ongoing compliance with the City's Economic Development Incentive Policy. Prior to making such determination the Governing Body has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by the Act.

Section 5. Sales Tax Exemption. The Governing Body hereby determines that pursuant to the provisions of K.S.A. 79-3601 *et seq.* (the "Sales Tax Act"), particularly 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Project and financed with proceeds of the Bonds are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefore.

Section 6. Reliance by Tenant; Limited Liability of City. It is contemplated that in order to expedite acquisition of the Project and realization of the benefits to be derived thereby, the Tenant may incur temporary indebtedness or expend its own funds to pay costs of the Project prior to the issuance of the Bonds; provided that the such expenditures incurred prior to the issuance of the Bonds are at the risk of the Tenant that the Bonds will actually be issued. Proceeds of Bonds may be used to reimburse the Tenant for such expenditures made not more than 60 days prior to the date this Resolution is adopted. The Bonds herein authorized and all interest thereon shall be paid solely from the revenues to be received by the City from the Project and not from any other fund or source. The City shall not be obligated on such Bonds in any way, except as herein set out. In the event that the Bonds are not issued, the City shall have no liability to the Tenant.

Section 7. Execution and Delivery of Documents. The Mayor is hereby authorized to execute the Letter of Intent, and the City Clerk is authorized to deliver executed copies of this Resolution and the Letter of Intent to the Tenant. After the Tenant has demonstrated compliance with the provisions of the Letter of Intent, the Mayor and City Clerk are authorized to execute a bond purchase agreement with the Purchaser and the Tenant for the sale of the Bonds in a form satisfactory to the City Attorney and Bond Counsel.

Section 8. Further Action. The Mayor, City Clerk and other officials and employees of the City, including the City Attorney and Bond Counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution, including, but not limited to: (a) cooperate with the Tenant in filing an application for a sales tax exemption certificate with the Kansas Department of Revenue with respect to Bond-financed property; and (b) execution on behalf of the City of the information statement regarding the proposed issuance of the Bonds to be filed with the State Court of Tax Appeals pursuant to the Act;.

Section 9. Effective Date. This resolution shall become effective upon adoption by the Governing Body and shall remain in effect until December 31, 2016, unless extended by affirmative vote of a majority of the Governing Body.

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(SEAL)	Carl Brewer, Mayor
ATTEST:	
Karen Sublett, City Clerk	
APPROVED AS TO FORM:	
AITROVED AS TO PORM.	
Gary E. Rebenstorf, Director of Law	
CERTIFICATE	
I hereby certify that the above and foregoing is a true and by the City Council of the City of Wichita, Kansas on June 10, 20 office.	
DATED: June 10, 2014.	
	Karen Sublett, City Clerk

ADOPTED by the City Council of the City of Wichita, Kansas, on June 10, 2014.

JLN\600809.130\RESOLUTION OF INTENT

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City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: Amendment of State Office Building Wrap Around Lease between the City of

Wichita and Sedgwick County and the Wichita Public Building Commission

(District I)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Adopt the Resolution approving the Second Supplemental Lease Agreement.

Background: In 1991, The Wichita Public Building Commission ("PBC") entered into a Lease Agreement with the State of Kansas (the "State Lease") to lease approximately 190,000 square feet of office space in the former Dillards department store building located on William Street between Broadway and Market in downtown Wichita (the "State Office Building"). In 1993, the PBC issued \$18,620,000 in lease revenue bonds to finance the costs to acquire and renovate the Dillards building and construct 475 spaces in the 650 space parking garage located on William between Emporia and Topeka.

At the time of the issuance of the PBC bonds in 1993, the PBC entered into a separate lease agreement with the City of Wichita and Sedgwick County which provided financial backstopping for the PBC bonds during the first 10 years of the lease and delegated the PBC's landlord duties under the State Lease to the City. This lease agreement, which is referred to as the "Wrap Around Lease," contains a purchase option whereby the City and County may jointly obtain title to the State Office Building for \$1.00, by mutual agreement, once the PBC bonds have been retired.

The various state agencies whose offices were consolidated into the new downtown location completed their move into the State Office Building on October 1, 1994 to begin the 20-year term prescribed by the State Lease. The State Lease provides the State with the option to renew the lease for a five-year term following the expiration of the initial 20-year term, or the option to purchase the building and associated parking facilities once the PBC bonds are repaid, for a price of approximately \$8,000,000. The PBC bonds, which were refinanced in 2003, will mature on October 1, 2014 – the same day the 20-year term of the Sate Lease will expire.

On June 7, 2013 the State notified the City of Wichita that it intends to terminate its occupancy of the State Office Building by the expiration date of the State Lease. City officials made several attempts to engage the State in negotiations for a longer term renewal of the State Lease at better terms than those provided in the State Lease. In the end, the State made a final determination to leave the State Office Building, based in large part on the needs of the largest tenant agency, the Department of Children and Families ("DCF") that indicated effective administration of its programs requires an office configuration not possible at the State Office Building.

All of the state agencies currently located in the State Office Building have lined up new leases and with two exceptions will be able to move prior to the expiration of the State Lease. The exceptions are DCF and the Kansas Bureau of Investigation ("KBI"). The KBI will co-locate with the Kansas Highway Patrol in a new facility being built at Hillside and K-254. DCF will lease the former Giant Store building at Oliver and Pawnee currently leased to the U.S. Postal Service. The Postal Service has announced its plan to close the Wichita Remote Encoding Center, but a firm date for the closure has not yet been set.

Amendment of State Office Building Wrap Around Lease June 10, 2014 Page 2

The State of Kansas has therefore requested a short term extension of the State Lease to accommodate the needs of DCF and the KBI for more time in which to make an orderly move to new quarters. To facilitate this State Lease extension, an extension and modification of the Wrap Around Lease is also required.

<u>Analysis:</u> The Postal Service lease on the South Oliver building will expire on August 31, 2015. The landlord needs 60-90 days to complete tenant improvements for DCF. Under the terms of the proposed State Lease extension, the PBC will receive monthly rent payments of \$145,075.38 for the initial 9-month extension term starting October 1, 2014 and ending July 1, 2015. The lease may be further extended on a month-to-month basis, at the State's option under the same terms, until December 31, 2015. The rent is computed on the basis of the current rental rates in the State Lease of \$11.92 per square foot per year, net of rent directly related to PBC bonds which will no longer exist. The rental rate will be applied to the 137,238 square feet of State Office Building space currently occupied by DCF and the KBI.

The monthly rent consists of two components: Base Rent of \$88,670.76 (\$6.98/sf) and Operating Expense Rent of \$56,404.62 (\$4.93/sf). The State Office Building will continue to be operated by the Kansas Department of Administration under the terms of the Property Management Agreement entered into with the City in 2009. Under the terms of that agreement, the State pays the operating costs of the State Office Building and at the end of each year the City remits the Operating Expense Rent back to the State after netting out the City's costs of operating the parking facilities and other incidental expenses.

During the last 20 years, the Base Rent payments and parking fees collected from state employees have been used to pay debt service on the PBC bonds. During the lease extension period, there will be no debt service expenses to offset this revenue, which will accumulate to the amount of \$798,036.82 for the ninemonth initial extension term. City and County staff propose that these funds should be set aside to be used to pay operating expenses on the State Office Building after the State's occupancy is ended and until the next use of the building has been determined.

WRAP AROUND LEASE

The State Lease Agreement is between the State of Kansas and the Wichita PBC and its amendment to provide for the extension described above will be considered by the PBC Board if the City Council and Board of County Commissioners have each approved the extension of the Wrap Around Lease. Under the terms of the original Wrap Around Lease, the agreement to provide financial backstopping and landlord services will terminate on October 1, 2014 if not extended, along with the option for the City and County to take over ownership of the State Office Building and associated parking facilities.

In addition to extending its term, the proposed amendments to the Wrap Around Lease include new provisions pertaining to the disposition of Base Rent payments received from the State during the extension period. As described above, it is proposed that these funds be used only to pay costs of securing and operating the State Office Building after final expiration of the State Lease, for as long as ownership rests with the PBC or jointly by the City and County. When joint ownership ends, any remaining funds would be divided between the City and County on the basis of each jurisdiction's share in the costs of developing the State Office Building Project which were not financed by PBC bonds. Based on this, the City's share would be 57.23% and the County's share would be 42.77%.

<u>Financial Considerations:</u> There is no cost to the City anticipated by extension of the State Lease or Wrap Around Lease. Any cost associated with securing and operating the State Office Building after expiration of the extended leases will be paid by Base Lease revenue received from the State in an amount not less than \$798,036.82.

Amendment of State Office Building Wrap Around Lease June 10, 2014 Page 3

<u>Legal Considerations:</u> The attached Amendment and Assignment of Lease and Property Management Agreement (State Lease Extension) and the attached Second Supplemental Lease Agreement (Wrap Around Lease Extension) have been reviewed by the Law Department and approved as to form.

Recommendations/Actions: It is recommended that the City Council adopt the resolution authorizing the execution of the Second Supplemental Lease Agreement between the Wichita Public Building Commission and the City of Wichita and Sedgwick County.

Attachments:

- Amendment and Assignment of Lease and Property Management Agreement (State Lease Extension)
- Second Supplemental Lease Agreement (Wrap Around Lease Extension)

AMENDMENT and ASSIGNMENT of LEASE & PROPERTY MANAGEMENT AGREEMENT

This constitutes an Amendment and Assignment to the Lease By and Between the Wichita Public Building Commission and the State of Kansas Through the Secretary of Administration for the building located at 130 S. Market, Wichita, KS.

The parties mutually agree that the lease agreement is hereby amended and assigned as follows:

The term of the lease for the 137,238 square feet currently occupied by the Department for Children and Families and the Kansas Bureau of Investigation is hereby extended to June 30, 2015. The Base Rent for the extended term shall be \$6.98 / square foot and the Operating Expenses shall be \$4.93 / square foot. Base Rent and Operating Expenses shall continue to be paid monthly.

The Department for Children and Families will continue to utilize the William St. parking garage and the surface parking lot at Broadway & William and will continue to pay the parking rates at a minimum of \$8,800 / month per the Lease.

Following the expiration of the extended term of the Lease, the Department for Children and Families may, at its option, extend the Lease on a month-to-month basis at the same Base Rent and Operating Expenses until December 31, 2015.

Notwithstanding anything to the contrary in the Lease, the Department of Administration assigns its rights and obligations under the lease to the Department for Children and Families and the Wichita Public Building Commission consents to the assignment and releases the Department of Administration from all obligations under the Lease.

The Property Management Agreement by and between the City of Wichita, Kansas and the Department of Administration is hereby extended to June 30, 2015 and monthly so long as the Department for Children and Families occupies the premises.

In consideration for the reduction in leased space in the building, the City of Wichita shall retain 10% (\$77,864.26) of the 2013 reimbursement due to the Department of Administration.

All other terms and conditions contained in the Primary Lease, dated November 12, 1992, as well as Exhibits and Riders to the Primary Lease shall be applicable to this

addendum to the Lease. Additionally, unless specifically modified, all terms and conditions of the Primary Lease remain unchanged and in full effect.

Lessor (Landlord)	Date	
Lessee (Agency Head)	Date	
Attorney, Department of Administration	Date	
Director of Facilities Management, Department of Administration	Date	
Secretary of Administration	 Date	

SECOND SUPPLEMENTAL LEASE AGREEMENT

BY AND BETWEEN

WICHITA PUBLIC BUILDING COMMISSION

AND

THE CITY OF WICHITA, KANSAS

AND

SEDGWICK COUNTY, KANSAS

DATED AS OF JULY __, 2014

SECOND SUPPLEMENTAL LEASE AGREEMENT

THIS SECOND SUPPLEMENTAL LEASE AGREEMENT ("Second Supplemental Lease"), dated as of July ___, 2014, by and among the Wichita Public Building Commission, a municipal corporation of the State of Kansas (the "Landlord"), the City of Wichita, Kansas, a municipal corporation of the State of Kansas (the "City"), and the Board of Commissioners of Sedgwick County, Kansas, a municipal corporation of the State of Kansas (the "County"), the City and County hereinafter collectively referred to as the "Tenants."

WITNESSETH:

WHEREAS, pursuant to the authority of K.S.A. 12-1757, *et seq.*, as amended by and chartered from with substitute provisions under Charter Ordinances 107, 149 and 162 of the City of Wichita, Kansas, and K.S.A. 10-116a (collectively, the "Act"), the Landlord has heretofore entered into a Lease Agreement with the Tenants dated as of March 1, 1993, as subsequently amended by a First Supplemental Lease Agreement with the Tenants, dated as of July 1, 2003 (collectively, the "Lease"); and

WHEREAS, the Landlord has agreed with the State of Kansas (the "State") to extend the term of that certain separate Lease Agreement dated November 12, 1992, by and between the Landlord and the State (the "State Lease") to June 30, 2105, with provision for possible month-to-month renewals by the State thereafter until December 31, 2015, but the Landlord's Revenue Bonds, Series N, 2003 (State Office Building Project)(the "2003 Bonds"), will mature as scheduled on October 1, 2014, obviating the need to apply further State rental payments to debt service on the 2003 Bonds; and

WHEREAS, The parties hereto desire to extend the Basic Term of the Lease to December 31, 2015, and to make certain provisions for use and disposition of the continuing rental payments to be made by the State under the terms of the extended State Lease.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein set forth, Landlord and the Tenants do hereby covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. The definitions of "Additional Rent" and "Basic Term" in the Lease are revised to read as follows:

"Additional Rent" means all fees charges and expenses of the Trustee under this Lease, the State Lease or the Indenture that are not paid by the State. In addition, Additional Rent also means: 1) Operating Expenses of the Complex that are not paid by the State or paid from revenues received as Base Rent under the State Lease after the maturity and payment of the 2003 Bonds; 2) all payments of whatever nature that relate to obligations the Landlord has a duty to pay under the State Lease, this Lease or the Indenture that are not paid by the State or paid from revenues received as Base Rent under the State Lease after the maturity and payment of the 2003 Bonds; and 3) all payments of whatever nature which the Tenants have agreed to pay or assume

under the provisions of this Lease and all expenses (including reasonable attorney's fees) incurred by Landlord in connection with the enforcement of any rights under this Lease, the State Lease or the Indenture, to the extent the same are not paid from revenues received as Base Rent under the State Lease after the maturity and payment of the 2003 Bonds. Provided, however, that for purposes of this definition, the fees, charges and expenses of the Trustee shall not include fees and expenses in connection with the replacement of any 2003 Bond or 2003 Bonds mutilated, stolen, lost or destroyed, nor any tax or other governmental charge imposed in relation to the transfer, exchange, registration, redemption or payment of the 2003 Bonds.

"Basic Term" means a term commencing as of March 1, 1993 and ending December 31, 2015.

ARTICLE XII

Section 12.2 Cash Basis and Budget Law is revised to read as follows:

Section 12.2 Cash Basis and Budget Law. It is understood and agreed by the Tenants that the Landlord is subject to and must comply with a cash basis law (K.S.A. 10-1101, *et seq.*), the Kansas Budget Law (K.S.A. 79-2935) and the Act, as each may hereafter be amended. It is further understood and agreed by the Landlord that the City and County are subject to and must comply with a cash basis law (K.S.A. 10-1101, *et seq.*), and the Kansas Budget Law (K.S.A. 79-2935), as each may hereafter be amended. In this regard, the provisions of this Lease and all obligations and duties imposed herein upon the Landlord, the City or the County shall be construed as contingent upon and subject to the sufficiency of annual appropriations properly budgeted and available for such purposes.

ARTICLE XVII

Section 17.1 Indemnity is revised to read as follows:

Section 17.1 Indemnity. To the extent allowed by law, the Tenants shall and they hereby covenant and agree to indemnify, protect, defend, and save the Landlord and Trustee harmless from and against any and all claims, demands, liabilities and costs, including attorneys fees, arising against Landlord and/or Trustee from duties and obligations the Landlord has assumed under the State Lease that are not payable from rents derived from the State Lease and are not payable from proceeds from insurance policies that are in force and effect under the terms set forth in the State Lease during the Basic Term hereof or any Extensions hereto, and upon receiving written notice from the Landlord, Tenants shall defend the Landlord and/or Trustee in any action or proceedings brought thereon. In addition, the Tenants shall and hereby covenant and agree to indemnify, protect, defend and save the Landlord and/or Trustee harmless from or against any and all claims, demands, liabilities and costs, including attorneys fees, arising from damage or injury, actual or claimed, of whatsoever kind occurred, to property or persons occurring in or allegedly occurring in, on or about the State Office Building and Parking Facility during the Basic Term hereof or any extension thereof, and, if a timely written notice is given by the Landlord or Trustee, the Tenants shall defend the Landlord and/or Trustee in any action or proceedings brought thereon; provided, however, that nothing contained in this Section 17.1

shall be construed as requiring the Tenants to indemnify the Landlord or Trustee for any claims resulting from any act or omission of the Landlord or Trustee, or their respective agents and employees, to the extent that such claims, demands, liabilities and costs are not covered by insurance that Landlord is required to procure pursuant to the State Lease. However, notwithstanding any other provision of this section, any obligation of indemnity hereunder shall be limited, to the extent that liability for the covered claim is, or but for this section would have been, barred or limited by the provisions of the Kansas Tort Claims Act.

ARTICLE XXIII

New sections are added to the Lease, as follows:

Section 23.4 Use of State Lease Revenues After Maturity of 2003 Bonds. After October 1, 2014, and for so long as the State Lease remains in effect, payments by the State under the State Lease will be used as follows: 1) the \$4.93/square foot monthly payment for Operating Expenses will continue to be dealt with under that certain, January 2009 Property Management Agreement by and between the City and the State; and 2) the \$6.98/square foot monthly payment for Base Rent will be directed to the City and be used only to pay Additional Rent due under this Lease and other costs of the Landlord relative to the State Office Building and Landlord's condominium interest in the Parking Facility during the extended term of the State Lease. Upon expiration of the State Lease, the funds held by the City (and any additional net revenues realized from interim leases or other income-producing uses of the property) will continue to be expended by the City to pay any costs of securing and operating such properties for so long as they continue to be held by the Landlord or (if the purchase option under this Lease is exercised) so long as they continue to be held jointly by the City and County. When the joint ownership ends, whether by sale of the properties to a third party or by either the City or County assuming sole ownership under mutual agreement, any unexpended rental revenues then remaining in the City's custody are to be divided between the City and County. The City is to receive 57.23% and the County 42.77%, representing the relative share of the unamortized costs of the State Office Building Project borne by the two jurisdictions.

Section 23.5 Ratification of Lease Provisions. Except as may be specifically amended, supplemented or modified by the terms of this Seconds Supplemental Lease Agreement, all of the provisions of the Lease, as previously amended and supplemented, shall continue in force and effect.

Section 23.6 Execution of Counterparts. This Second Supplemental Lease Agreement may be executed simultaneously in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the date first above written.

WICHITA PUBLIC BUILDING COMMISSION,

as Landlord

	D.v.
	By:, President
ATTEST:	
By:	
By:, Secretary	
ACKNOW	VLEDGMENT
Notary Public in and for said County and State Public Building Commission, a municipate, Secretary of such must me to be the same persons who executed, as said municipal corporation, and such persons of the act and deed of said municipal corporation.	s July, 2014, before me, the undersigned, a ste, came, President of the Wichita al corporation of the State of Kansas and nicipal corporation, who are personally known to such officers, the within instrument on behalf of duly acknowledged the execution of the same to be hereunto subscribed my name and affixed my
official seal, the day and year last above writte	
My Commission Expires:	Notary Public
[Add City and County Signature and Notary B	locs on Separate Pages]

RESOLUTION NO. 14-156

A RESOLUTION AUTHORIZING THE EXECUTION OF A SECOND SUPPLEMENTAL LEASE AMONG THE CITY OF WICHITA, KANSAS, SEDGWICK COUNTY, KANSAS AND THE WICHITA PUBLIC BUILDING COMMISSION.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, pursuant to the authority of K.S.A. 12-1757, et seq., as amended by and chartered from with substitute provisions under Charter Ordinances 107, 149 and 162 of the City, and K.S.A. 10-116a (collectively, the "Act"), the Wichita Public Building Commission, a municipal corporation of the State of Kansas (the "WPBC") has heretofore, as landlord, entered into a Lease Agreement with the City and the Board of Commissioners of Sedgwick County, Kansas, a municipal corporation of the State of Kansas (the "County") as tenants (collectively, the "Tenants"), dated as of March 1, 1993, as subsequently amended by a First Supplemental Lease Agreement between the WPBC and the Tenants, dated as of July 1, 2003 (collectively, the "Lease"); and

WHEREAS, the WPBC has agreed with the State of Kansas (the "State") to extend the term of that certain separate Lease Agreement dated November 12, 1992, by and between the WPBC, as landlord and the State, as tenant (the "State Lease") to June 30, 2015, with provision for possible month-to-month renewals by the State thereafter until December 31, 2015; and

WHEREAS, the WPBC and the Tenants desire to extend the term of the Lease to December 31, 2015 to conform to the State Lease and make certain other modifications and amendments thereto; and

WHEREAS, the Governing Body hereby finds and determines that it is necessary and advisable authorize the execution of an amendment to the Lease in accordance with the foregoing.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. **Approval of Second Amendment to Lease**. The Second Supplemental Lease Agreement, among the City and County, as tenants, and the WPBC, as landlord (the "Second Amendment") is hereby approved. The Mayor and Clerk are hereby authorized and directed to execute the Second Amendment in substantially the form presented to the Governing Body this date with such modifications thereto as may be approved by the City Attorney.

Section 2. **Further Authority**. The Mayor, Clerk, City Manager and other representatives of the City are hereby authorized to take such further action as may be necessary to accomplish the intent of this Resolution.

Section 3. **Effective Date**. This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

ADOPTED by the City Council of the City of Wichita, Kansas, on June 10, 2014.

JLN\600809.053\STATE OFFICE BUILDING LEASE\RES RE WRAP AROUND AMEND (06-04-14)

(SEAL)		
	Carl Brewer, Mayor	
ATTEST:		
Karen Sublett, City Clerk		
APPROVED AS TO FORM:		
Gary E. Rebenstorf, Director of Law		

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: Amendment to the 2013 Health Care Facilities Refunding and Improvement Revenue

Bond Letter of Intent (Presbyterian Manors, Inc.)(District I & VI)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Close the public hearing and adopt the Resolution authorizing the amendment of the Letter of Intent.

Background: On April 16, 2013, the Wichita City Council approved a two year Letter of Intent ("LOI") for Presbyterian Manors, Inc. ("PMI") to issue Health Care Facilities Refunding and Improvement Revenue Bonds in an amount not-to-exceed \$110,000,000. The City Council approved the issuance of approximately \$85 million on July 23, 2013. Bond proceeds were to be used to refinance existing debt and finance new improvements at several of its facilities throughout the state, including the PMI residential facility located at 4700 W. 13th Street in Wichita. Through a series of interlocal agreements, the City of Wichita serves as a "host" bond issuer in order to facilitate consolidated financings of PMI facilities in Kansas.

PMI is requesting an increase in the 2013 Letter of Intent for an additional \$15 million to cover increased construction costs at the west 13th Street project and the acquisition of a new corporate headquarters.

<u>Analysis:</u> PMI owns and operates 16 retirement facilities in Kansas and Missouri, which have an aggregate of 1,472 licensed adult care beds and 555 additional retirement units. PMI was organized to operate retirement communities and independent living centers, provide other long-term care services for older individuals and disabled persons, and offer accommodations and services especially designed to meet the physical, social, spiritual and psychological needs, and to contribute to the health, security, sense of well-being and usefulness of older individuals and disabled persons.

The 2013 Bond proceeds were used to refinance outstanding bonds (Series III, 2004 and Series III, 2007), fund new improvements and pay costs of issuance. A total of \$85,055,000 was issued in 2013 leaving a balance of \$24,945,000 on the LOI. Increased costs relating to construction of the new facilities at the West 13th Street campus has added approximately \$10 million to the amount needed to complete that project.

Approximately \$3.5 million of the increased LOI amount will be used to acquire and renovate a new corporate headquarters for PMI, located at 2414 N. Woodlawn. This was not anticipated in the original LOI. PMI will occupy approximately 75% of the building. As a 501(c)(3) PMI would be eligible for a 100% tax abatement on any real property it occupies. Since a portion of the building will be leased to tenants that provide rental income, PMI is not eligible for the tax abatement on the property in its own right. Therefore, PMI is requesting a ten-year, 100% abatement on the new headquarters and has agreed to a Payment-In-Lieu-Of-Taxes (PILOT) for the portion of the building it leases to other tenants. PMI may terminate this tax abatement prior to the end of the ten year period should it occupy the entire building at which point its 501(c)(3) status would make it eligible for the abatement. PMI anticipates creating at least 26 new jobs, at an average annual salary of \$29,525 as result of its expansion. The North American Industrial Classification System average for these jobs (nursing and residential care facilities) is \$24,297.

Presbyterian Manor, Inc. June 10, 2014 Page 2

The anticipated 2014 bond issue in the principal amount of approximately \$39 million will exceed the remaining authority of the LOI by \$14,055,000. PMI is requesting an increase of the Letter of Intent in the not-to-exceed amount of \$15 million for a total not-to-exceed amount of \$125 million.

B.C. Ziegler and Company in Chicago, Illinois, will purchase the 2014 bonds and publicly reoffer them. The firm of Gilmore & Bell, PC, will serve as bond counsel in the transaction. Presbyterian Manor, Inc, agrees to comply with the Standard Letter of Intent Conditions.

<u>Financial Considerations:</u> Presbyterian Manor, Inc. agrees to pay all costs of issuing the bonds and agrees to pay the City's \$2,500 annual IRB administrative fee for the term of the bonds.

City staff and PMI have negotiated the terms of a property tax abatement designed to abate the taxes only on property actually occupied by PMI. Under this arrangement, all bond-financed improvements will be subject to 100% five-year abatement, plus a second five years subject to Council review and approval. Each year of the abatement period, PMI will pay the City a Payment-In-Lieu-Of-Taxes ("PILOT") equal to the prorated amount of taxes that would have been due on the portion of the building not occupied by PMI, based on current appraised value and current tax rates.

The estimated 100% first year's abated taxes on the PMI Headquarters building would be approximately \$69,506 and would be split among the taxing jurisdictions as follows (based on current Sedgwick County appraisal):

City	\$ 18,735	State	\$ 865
County	\$ 16,931	USD 259	\$ 32,975

Approximately 25% of the abatement would be recouped by the taxing authorities through the PILOT each year of the abatement.

The cost/benefit analysis performed by the WSU Center for Economic Development and Business Research reflects the following benefit-cost ratios:

City General Fund	1.66 to one
Sedgwick County	1.53 to one
USD #259	1.34 to one
State of Kansas	1.50 to one

<u>Legal Considerations:</u> Bond documents needed for the issuance of the bonds will be prepared by bond counsel. The form of bond documents shall be subject to review and approval by the Law Department prior to the issuance of any bonds.

Recommendations/Actions: It is recommended that the City Council close the public hearing and adopt the Resolution authorizing amendment of the Letter of Intent to issue \$125,000,000 in Industrial Revenue Bonds for Presbyterian Manor, Inc., approving a 100% IRB property tax abatement for the new corporate headquarters, subject to Payment-In-Lieu-Of-Taxes and authorizing necessary signatures.

Attachments: Letter of Intent Supplemental Request, Resolution

RESOLUTION NO. 14-161

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS DETERMINING THE ADVISABILITY OF ISSUING HEALTH CARE FACILITIES REVENUE BONDS FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A HEALTH CARE FACILITY AND CORPORATE OFFICE BUILDING LOCATED IN SAID CITY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State of Kansas (the "State"); and

WHEREAS, the City Council (the "Governing Body") of the City desires to promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State; and

WHEREAS, pursuant to the provisions of the Kansas Economic Development Revenue Bond Act, as amended and codified in K.S.A. 12-1740 *et seq.* (the "Act"), the City is authorized to issue revenue bonds for such purposes; and

WHEREAS, pursuant to the Act, the City approved a Letter of Intent dated April 26, 2013, indicating an intent of the City to issue health care facilities revenue bonds in an aggregate principal amount of \$110,000,000 (the "Original Letter of Intent"); and

WHEREAS, pursuant to the Act and the Original Letter of Intent, the City has issued its Health Care Facilities Revenue Bonds (Presbyterian Manors, Inc.), Series IV-A, 2013, in the original principal amount of \$78,055,000 and its Taxable Health Care Facilities Revenue Bonds (Presbyterian Manors, Inc.), Series IV-B, 2013, in the original principal amount of \$7,000,000 (collectively, the "Series 2013 Bonds") to provide funds to finance or refinance the acquisition, construction and equipping of a certain health care facilities located in the City and the State of Kansas (the "Facilities"), which are currently leased by the City to Presbyterian Manors, Inc., a Kansas not-for-profit corporation (the "Corporation"); and

WHEREAS, pursuant to the Act, the City is authorized to issue bonds to pay the costs of the acquisition, construction and equipping of improvements to the portion of the Facilities located in the City (the "Facility Additions") and pay the costs of the acquisition of a corporate office building located in the City (the "Office Project"), and the Corporation has requested that the City issue revenue bonds for such purpose; and

WHEREAS, the Governing Body determines it to be advisable and in the interest and for the welfare of the City and its inhabitants that the aggregate principal amount of health care facilities revenue bonds of the City initially referenced in the Original Letter of Intent be increased to an aggregate principal amount of not to exceed \$125,000,000, and that said aggregate amount not yet issued be authorized and issued pursuant to the Act to provide funds to pay the costs of the Facility Additions and the Office Project.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Public Purpose. The Governing Body hereby finds and determines that the Facility Additions and the Office Project will promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State.

Section 2. Authorization to Acquire Facility Additions and Office Project; Intent to Issue Bonds. The City is hereby authorized to proceed with the acquisition, construction and equipping of the Facility Additions and the Office Project and to issue its health care facilities revenue bonds, in one or more series (the "Additional Bonds"), to pay the costs thereof, subject to satisfaction of the conditions of issuance set forth herein. The original aggregate principal amount of Series 2013 Bonds and Additional Bonds shall not exceed \$125,000,000.

Section 3. Conditions to Issuance of Additional Bonds. The issuance of the Additional Bonds is subject to: (a) the Corporation's written acceptance of an amendment to the Original Letter of Intent containing the City's conditions to the issuance of the Additional Bonds in accordance with the City's Economic Development Incentive Policy (the "Amended Letter of Intent"); (b) the successful negotiation and sale of the Additional Bonds to B.C. Ziegler and Company, Chicago, Illinois (the "Purchaser"), which sale shall be the responsibility of the Corporation and not the City; (c) the receipt of the approving legal opinion of Gilmore & Bell, P.C. ("Bond Counsel") in form acceptable to the City, the Corporation and the Purchaser; (d) the obtaining of all necessary governmental approvals to the issuance of the Additional Bonds; and (e) the commitment to and payment by the Corporation or Purchaser of all expenses relating to the issuance of the Additional Bonds, including, but not limited to: (i) expenses of the City and the City Attorney; (ii) any underwriting or placement fees and expenses; (iii) all legal fees and expenses of Bond Counsel; and (iv) all recording and filing fees, including fees of the Kansas Court of Tax Appeals.

Section 4. Property Tax Exemption. The Governing Body hereby determines that pursuant to the provisions of K.S.A. 79-201a *Twenty-Fourth* the Office Project, to the extent purchased or constructed with the proceeds of the Additional Bonds, should be eligible for an exemption from payment of ad valorem property taxes for a period up to ten calendar years commencing with the year following the year in which the Additional Bonds are issued, provided proper application is made therefor. The Governing Body hereby conditionally approves an ad valorem property tax exemption on the Office Project, to the extent financed by proceeds of the Additional Bonds, for a five year term, with an additional five year term to be considered thereafter, at the discretion of the Governing Body, all subject to the Corporation's ongoing compliance with the City's Economic Development Incentive Policy. Any portion of the Office Project subject to ad valorem property tax exemption not occupied by the Corporation or its affiliates, shall be subject to a payment-in-lieu of taxes. Prior to making such determination the Governing Body has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by the Act.

Section 5. Sales Tax Exemption. The Governing Body hereby determines that pursuant to the provisions of K.S.A. 79-3601 *et seq*. (the "Sales Tax Act"), particularly 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Facility Additions and the Office Project and financed with proceeds of the Additional Bonds are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefore.

Section 6. Reliance by Corporation; Limited Liability of City. It is contemplated that in order to expedite acquisition of the Facility Additions and the Office Project and realization of the benefits to be derived thereby, the Corporation may incur temporary indebtedness or expend its own funds to pay costs of

JLN\600809.118\RESOLUTION OF INTENT (05-16-14)

the Facility Additions and the Office Project prior to the issuance of the Additional Bonds; provided that such expenditures incurred prior to the issuance of the Additional Bonds are at the risk of the Corporation that the Additional Bonds will actually be issued. Proceeds of Additional Bonds may be used to reimburse the Corporation for such expenditures made not more than 60 days prior to the date this Resolution is adopted, and as provided by §1.150-2 of the U.S. Treasury Regulations. The Additional Bonds herein authorized and all interest thereon shall be paid solely from the revenues to be received by the City from the Facilities, the Facility Additions and the Office Project and not from any other fund or source. The City shall not be obligated on such Additional Bonds in any way, except as herein set out. In the event that the Additional Bonds are not issued, the City shall have no liability to the Corporation.

Section 7. Execution and Delivery of Documents. The Mayor is hereby authorized to execute the Amended Letter of Intent, and the City Clerk is authorized to deliver executed copies of this Resolution and the Amended Letter of Intent to the Corporation. After the Corporation has demonstrated compliance with the provisions of the Amended Letter of Intent, the Mayor and City Clerk are authorized to execute one or more bond purchase agreements with the Purchaser and the Corporation for the sale of the Additional Bonds in a form satisfactory to the City Attorney and Bond Counsel.

Section 8. Further Action. The Mayor, City Clerk and other officials and employees of the City, including the City Attorney and Bond Counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution, including, but not limited to: (a) cooperate with the Corporation in filing an application for a sales tax exemption certificate with the Kansas Department of Revenue with respect to Additional Bonds-financed property; and (b) execution on behalf of the City of the information statement regarding the proposed issuance of the Additional Bonds to be filed with the State Court of Tax Appeals pursuant to the Act.

Section 9. Effective Date. This resolution shall become effective upon adoption by the Governing Body and shall remain in effect until December 31, 2014, unless extended by affirmative vote of a majority of the Governing Body.

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(SEAL)	Carl Brewer, Mayor
ATTEST:	
Karen Sublett, City Clerk	
APPROVED AS TO FORM:	
APPROVED AS TO FORM:	
Gary E. Rebenstorf, Director of Law	
CERTIFICATE	
I hereby certify that the above and foregoing is a true and by the City Council of the City of Wichita, Kansas on June 10, 2 office.	
DATED: June 10, 2014.	
	Karen Sublett, City Clerk

ADOPTED by the City Council of the City of Wichita, Kansas, on June 10, 2014.

JLN\600809.118\RESOLUTION OF INTENT

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City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: Ordinance Amending Sections 3.72.010, 3.72.015, 3.72.130 and 3.72.160 and

Repealing Licensing Provisions Related to Firearms Permit for Private Security

Officers.

INITIATED BY: Law Department

AGENDA: New Business

Recommendation: Place ordinance on first reading.

Background: During the last legislative session, the Kansas Legislature passed House Bill 2578 relating to firearms. The Bill preempts municipalities from regulating in any manner, the possession, carrying and transporting of firearms.

Chapter 3.72 of the Code of the City of Wichita establishes licensing requirements for private security officers. The provisions mandate training and set forth the types of firearms which may be carried by private security officers.

<u>Analysis</u>: While Wichita Police Department staff consider it important for armed private security officers to be properly trained and regulated, the broad preemptive language contained in HB 2578 preclude any regulation of the types of firearms carried, required firearm training or firearm permit requirements for private security officers.

The proposed amendments repeal:

- 1. Firearm permit applications;
- 2. Firearm permit requirements;
- 3. Types of weapons (firearms) which may be carried by private security officers; and
- 4. Firearm training requirements previously mandated for private security officers.

<u>Financial Considerations</u>: Lost revenue from applicable firearm permit fees and training costs will occur. The Police Department estimates this revenue loss at \$500 per year for the General Fund.

<u>Legal Considerations</u>: Ordinances have been prepared by and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council place the ordinance on first reading and authorize the necessary signatures.

<u>Attachments</u>: Ordinances

DELINEATED 5/27/2014

AN ORDINANCE AMENDING SECTIONS 3.72.010, 3.72.015, 3.72.130 AND 3.72.160 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO PRIVATE SECURITY OFFICERS AND PRIVATE SECURITY AGENCIES WITHIN THE CITY, AND REPEALING THE ORIGINAL OF SECTIONS 3.72.005, 3.72.010, 3.72.015, 3.72.130, 3.72.160, 3.72.210, 3.72.220, 3.72.230, 3.72.240, 3.72.250, 3.72.260, 3.72.270 AND 3.72.280.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 3.72.005 of the Code of the City of Wichita, Kansas, is hereby repealed.

WHEREAS, the City of Wichita has an important governmental interest in protecting the health, safety, and welfare of its citizenry and the regulation of private security agencies and private security officers operating within the City is a reasonable means to perpetuate that interest; and

WHEREAS, pursuant to the police powers of the City of Wichita and in accordance with the laws of the State of Kansas and the opinions of the Attorney General of the State of Kansas, specifically, A.G.O. No. 2011–24, which states, "A city may lawfully require firearms permits, regulate training requirements and limit the make, model, and caliber of firearms that may be carried by private security officers while engaged in the duties of a private security officer;" and

WHEREAS, it is not the intent of the City to prohibit the concealed carry of firearms by private security officers beyond the restrictions authorized by the Personal Family Protection Act, K.S.A. 75-7c01 et seq. and any amendments thereto.

WHEREFORE, the City of Wichita enacts the ordinance codified in Chapter 3.72 pertaining to the licensing of private security agencies, requiring permits for private security officers and requiring additional permits for and imposing certain regulations and training requirements upon private security officers who carry a firearm while engaged in such private security officer's duties.

SECTION 2. Section 3.72.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows: "Definitions.

For the purpose of this chapter, the words and phrases used herein shall have the following meanings unless otherwise clearly indicated by the context:

- (1) "Agency" means an establishment engaged in doing business for another.
- (2) "Arrest" means the act of stopping, and the taking or detaining in custody by authority of law.
- (3) "Authorized equipment and duty gear" means equipment and duty gear authorized by the Chief of Police that may be carried or used by private security officers permitted under this chapter.
- (4) "Basic responsibilities of a private security officer" means to observe and report crimes and incidents; on occasion to stop and question; to provide security against loss from fire or mechanical equipment failure and enforce property rules and regulations; to control access to specific areas of a facility or building; and to act occasionally as a crowd monitor or to maintain order. These responsibilities shall include vehicle patrol when an approved classroom course on defensive driving has been completed. These responsibilities shall not include: authority beyond that of a private citizen, the right to use physical force in the performance of these duties except to protect

the private security officer and others from clear and immediate threat of serious bodily harm, or acting in the capacity of a private security officer for other than a client for which the private security officer is contracted to provide services.

- (5) "Business" means commercial, industrial or professional dealings, activity or the supply of services engaged in as a means of livelihood.
- (6) "Client" means any person who engages the services of a private security agency.
- (7) "Chief of Police" as used in this chapter means the Chief of the Wichita Police Department or his or her authorized designee.
- (8) "Citizen's arrest" or "Arrest by a private person" shall have the meaning as set forth in K.S.A. 22-2403 and any amendments thereto, which states that a person who is not a law enforcement officer may arrest another person when: (1) A felony has been or is being committed and the person making the arrest has probable cause to believe that the arrested person is guilty thereof; or (2) any crime, other than a traffic infraction, has been or is being committed by the arrested person in the view of the person making the arrest.
- (9) "Firearm" for the purpose of this chapter, means any pistol or revolver commonly referred to as a handgun, constructed or arranged so as to be capable of being loaded with gunpowder or other explosive substances, cartridges, shots, slugs or balls, and being exploded, fired or discharged.
- (10) "Firearm permit" means a permit for the limited authority to carry an unconcealed loaded firearm by a person not a law enforcement officer, within the city limits, when the carrying of such firearm would otherwise be in violation of Section

5.88.010 of the Code of the City of Wichita, Kansas. Such permit does not in any way purport to regulate the right to carry a concealed firearm issued or recognized pursuant to any federal, state or local law.

(11)(9) "For hire" includes all compensation paid directly or indirectly.

(12)(10) "License" means the authority to conduct business by a private security agency within the city limits.

(13)(11) "Licensee" means any person to whom a current license has been issued under this chapter authorizing such person to conduct business as a private security agency within the city limits.

(14)(12)"Person" means any natural person, corporation, partnership or association.

(15)(13)"Permit" means the authority to work as a private security officer in the city limits, and pursuant to the following classifications:

- (a) "Temporary basic private security permit" means the permit issued to a person who meets the qualifications required of a private security officer but who has not yet completed the basic private security course. A person with a temporary basic permit may carry out the basic responsibilities of a private security officer, but is not authorized to carry any equipment weapons, including handcuffs.
- (b) "Basic private security permit" means the permit issued to a person having completed the basic private security course, including a defensive driving classroom course given by either the city of Wichita or a private driving instructor approved in writing by the Chief of Police, and meeting the qualifications

required of a private security officer. This permit shall allow the person to perform the basic duties of a private security officer including vehicle patrol. This permit shall not allow the person to carry any equipment other than handcuffs.

- (c) "Advanced private security permit" means the permit issued to a person who has completed both the basic and advanced private security courses and meets the qualifications required of a private security officer. This permit shall allow the individual to perform the basic duties of a private security officer to include vehicle patrol and the carrying of authorized equipment as approved in writing by the Chief of Police.
- (d) "Advanced private security and firearm permit" means the permit issued to a person who has completed the basic and advanced private security courses and the firearms training course. This permit shall allow the person to perform the basic duties of a private security officer to include vehicle patrol and, in addition to authorized equipment, allows the person to carry a firearm while performing the duties of a private security officer.

(16)(14)"Private detective" and "Private detective agency" shall have the meaning ascribed to said terms by K.S.A. 75-7b01(b) and (c) and any amendments thereto.

(17)(15)"Private security officer" means any person regularly employed by a person, firm or corporation, and whose duties, in addition to patrolling, guarding, transporting and watching the property of the employer or any client of the employer, include conducting investigations concerning the reputation or character of employees or prospective employees, and investigations concerning the location of property of the

employer that becomes lost or stolen. For the purposes of this chapter, "private security officer" shall not include persons working for an armored car service.

(18)(16)"Private security agency" means any person, firm or corporation who engages in a business for hire to provide a protective service for the property of others, and whose duties and activities in that connection include patrolling, guarding, transporting or watching the property of a subscriber, purchaser or client under a contract or agreement to provide a protective service. For the purposes of this chapter, "private security agency" shall not include armored car services."

SECTION 3. Section 3.72.015 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows: "Scope of regulations, authority of licensees and permitees.

- (1) The provisions of this Chapter are intended to regulate uniformed private security officers as that term is defined in Section 3.72.010(16)(15) herein. The provisions of this Chapter are further intended to regulate such uniformed private security officers who are authorized by a permit issued under the provisions of this Chapter to earry an unconcealed firearm in the course of such private security officer's duties.
 - (2) It is not the intent of this Chapter to regulate any of the following:
 - (a) activities performed in a non-uniformed or plain-clothes capacity,
 with or without a concealed weapon; or
 - (b) activities that fall under the regulation of the statutes of this state or any similar laws from other jurisdictions regulating private investigators; or

- (c) activities that are allowed pursuant to the right to carry a concealed firearm issued or recognized pursuant to any federal, state or local law; or
- (d) The business of transporting prisoners under a contract with any state or county government or the federal government.
- (3) No license or permit issued pursuant to this Chapter provides the holder thereof with any authority to direct traffic on the streets or highways of the City of Wichita.
- (4) A licensee or permitee under this Chapter who engages in any activity or business that involves the wearing of non-uniformed or plain clothing or the carrying of a concealed firearm or other weapon must have legal authority for such activity independent of the license or permit issued pursuant to this Chapter."

SECTION 4. Section 3.72.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows: "Application for private security permit—Approval of issuance.

- (1) The application for a private security permit shall contain:
 - (a) A full set of the applicant's fingerprints;
 - (b) Two passport-sized color photographs of the applicant taken within the preceding 30 days;
 - (c) Proof of age and identity which must be provided by presentation of a government-issued or other official or apparently official document that is not encrypted, containing a photograph and signature of the application;

- (d) A letter from the agency stating that the applicant is being considered for employment;
- (e) A drug screening test, the results of which are no older than 30 days preceding the date of application, which has been performed by a licensed laboratory certified to conduct such testing, indicating the applicant is free from the use of amphetamines, barbiturates, benzodiazepines, cannabinoid, cocaine metabolites, opiates and phencyclidine; and
- (f) If the application is for a firearms permit, a letter from a licensed psychologist or psychiatrist, dated within the preceding six months, stating that in his or her opinion the applicant does not suffer from any mental or emotional impairment which would adversely affect the applicant's abilities to carry out the duties of an armed private security officer.
- All questions on the application form shall be answered truthfully and fully in the applicant's own handwriting. Falsifying or omitting any information requested on the application shall be cause for denying a permit. If a permit is denied for providing false information or making a false statement on an application, the applicant shall be ineligible to reapply for a permit under this chapter for one calendar year from the date of the permit denial.
- (3) Private security officers shall be required to satisfactorily complete the course of study for private security officers which has been approved in

writing by the Chief of Police. Said course of study shall be completed within 90 days from the date of application; provided, however, that the Chief of Police may, upon written request and for good cause shown, extend the 90 days course completion requirement, or waive the training requirement. If an applicant has successfully completed the currently approved course or courses of study for private security officers within one calendar year prior to his or her application and can show satisfactory proof thereof, the applicant will be considered to have complied with the training requirement for the category of permit corresponding to the level of training completed.

SECTION 5. Section 3.72.160 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows: "Fees—Permits and training—New and renewal. The following fees are established for the permitting and training of private security officers. All fees are non-refundable and no fees shall be pro-rated:

(1) Permit fees:

- (a) Initial permit: \$45.00; for applications received on or after July 1, 2014, \$50.00.
- (b) Firearm permit upgrade: \$25.00; for applications received on or after July 1, 2014, \$30.00.

(e)(b)Additional permit (for private security officers employed by more than one agency): \$35.00; for applications received on or after July 1, 2014, \$40.00.

- (d) (c) Permit renewal: \$35.00; for applications received on or after July 1, 2014, \$40.00.
- (e) (d) Additional permit renewal: \$35.00; for applications received on or after July 1, 2014, \$40.00.
- (f) (e) Permit replacement: \$25.00; for applications received on or after July 1, 2014, \$30.00.
- (g) (f) Fingerprinting and criminal history records check: Fee as set by the Kansas Bureau of Investigation

(2) Training fees:

- (a) Basic training: *
- (b) Advanced training: *
- (c) Firearm training: *
- (d) Annual firearm proficiency testing *

*Fees for training courses are set by designated training providers and are subject to review and approval by the Chief of Police."

SECTION 6. Section 3.72.210 of the Code of the City of Wichita, Kansas, is hereby repealed.

Firearm permit – Issued by Chief of Police, requirements.

A firearm permit shall be issued to a private security officer by the Chief of Police provided that:

(1) no firearm permit shall be issued to any person who has not attained the age of 21 years; and

- (2) the private security officer is not prohibited from lawfully possessing a firearm by any federal, state or local law; and
- (3) the private security officer presents satisfactory proof that he or she has completed the required course of training; and
- (4) the private security officer is currently in possession of an advanced private security permit prior to the firearm permit being issued; and
- (5) the agency employing the private security officer provides a written statement that he or she is required to carry a firearm in order to perform the duties of employment.

SECTION 7. Section 3.72.220 of the Code of the City of Wichita, Kansas, is hereby repealed.

Firearm permit Fee, duration, expiration.

A fee according to the schedule set forth in 3.72.160 shall be charged for each firearm permit. A firearm permit shall be valid only for one year from the date of issuance and upon expiration must either be renewed or surrendered as provided in this chapter.

SECTION 8. Section 3.72.230 of the Code of the City of Wichita, Kansas, is hereby repealed.

Firearm permit – Training required.

All persons initially applying for a firearm permit shall be required to complete and satisfactorily pass a firearm training and qualification course as approved by the Chief of Police. All persons seeking to renew an existing firearm permit shall be required to complete and satisfactorily pass a firearm qualification course as approved by the

Chief of Police. The required training and/or qualification course must be completed prior to the firearm permit being issued or renewed, and must be provided by firearms instructors possessing instruction credentials as required and approved by the Chief of Police. Training requirements and qualification standards for permit applicants as well as credentials required for firearms instructors shall be in writing and signed by the Chief of Police, and shall be posted on the Wichita Police Department's website and otherwise made available to all private security officers, agencies, and permit applicants.

SECTION 9. Section 3.72.240 of the Code of the City of Wichita, Kansas, is hereby repealed.

Firearm permit Limited to authorized firearm and ammunition only, information required.

(1) The Chief of Police shall approve the make, model, caliber, barrel length, trigger pull and magazine capacity of all firearms which may be carried pursuant to a firearm permit, as well as the ammunition which may be used therein. A list of approved firearms, specifications and ammunition shall be in writing and signed by the Chief of Police. Such list shall be posted on the Wichita Police_Department's website and otherwise made available to all private security officers, agencies, and permit applicants. Only a specific firearm and ammunition of the type approved by the Chief of Police shall be carried and used pursuant to a firearms permit. The use or possession of any unapproved firearm or a firearm with any feature, modification, or ammunition not approved by the Chief of Police shall be a violation of this ordinance.

(2) The make, model, caliber and serial number of the specific firearm shall be noted on the private security officer's permit which shall be in his or her possession at

all times when the authorized firearm is carried, and failure to do so is considered a violation of this ordinance.

SECTION 10. Section 3.72.250 of the Code of the City of Wichita, Kansas, is hereby repealed.

Firearm permit—Duty to report change in status.

- (1) Every person possessing a firearm permit shall be required to report to the Chief of Police any change in such person's permit status.
- (2) It shall also be the duty of every private security agency to notify the Chief of Police of any employee's change in permit status.
- (3) Every person possessing a firearm permit issued pursuant to this chapter shall be required to report immediately to the Chief of Police if such person becomes ineligible to possess a firearm under any federal, state or local law.
- (4) If any private security agency becomes aware that any employee of such agency has become ineligible to possess a firearm under any federal, state or local law, it shall be the duty of such agency to report such information immediately to the Chief of Police.
- (5) Failure to make any report as required in this section shall constitute a misdemeanor and shall be punishable as set forth in Section 3.72.340.

SECTION 11. Section 3.72.260 of the Code of the City of Wichita, Kansas, is hereby repealed.

Firearm – when carrying prohibited.

(1) Every person possessing a firearm permit under this chapter shall carry such firearm only while traveling directly from the person's residence to the person's place of

employment, during the person's tour of duty while actively engaged as a private security officer, and while traveling directly from the person's place of employment to the person's residence.

- (2) Carrying a firearm into any tavern, private club or drinking establishment is prohibited.
- (3) Carrying of any firearm other than the firearm specifically authorized by the private security officer's firearm permit is prohibited.
- (4) Failure to comply with any of the provisions set forth in this section shall be considered a violation of this ordinance and shall be punishable as set forth in 3.72.340.

SECTION 12. Section 3.72.270 of the Code of the City of Wichita, Kansas, is hereby repealed.

Firearm—Discharge of firearm.

Any holder of a firearm permit who discharges the holder's firearm within the city limits at any time other than while at an approved range shall immediately report the same to the police department. Failure to make the required report shall be considered a violation of this ordinance and shall be punishable as set forth in 3.72.340.

SECTION 13. Section 3.72.280 of the Code of the City of Wichita, Kansas, is hereby repealed.

Firearms permit—Suspension/revocation, grounds therefore and right to hearing.

The chief of police may suspend or revoke any firearm permit provided that the holder of the permit shall immediately be given notice of the cause of such suspension or revocation and an opportunity to be heard as set forth in Section 3.72.110.

SECTION 14. The originals of Section 3.72.005, Section 3.72.010, Section 3.72.015, Section 3.72.130, Section 3.72.160, Section 3.72.210, Section 3.72.220, Section 3.72.230, Section 3.72.240, Section 3.72.250, Section 3.72.260, Section 3.72.270 and Section 3.72.280 are hereby repealed.

SECTION 15. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon adoption and publication in the official city newspaper.

newspaper.	
PASSED by the governing body	of the City of Wichita, Kansas, this
day of, 2014.	
	Carl Brewer, Mayor
Attest:	
Karen Sublett, City Clerk	
Approved as to Form:	
Gary E. Rebenstorf, Director of Law	

First Published in the Wichita Eagle June 20, 2014 083303

CLEAN

ORDINANCE NO. 49-762

5/27/2014

AN ORDINANCE AMENDING SECTIONS 3.72.010, 3.72.015, 3.72.130 AND 3.72.160 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO PRIVATE SECURITY OFFICERS AND PRIVATE SECURITY AGENCIES WITHIN THE CITY, AND REPEALING THE ORIGINAL OF SECTIONS 3.72.005, 3.72.010, 3.72.015, 3.72.130, 3.72.160, 3.72.210, 3.72.220, 3.72.230, 3.72.240, 3.72.250, 3.72.260, 3.72.270 AND 3.72.280.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 3.72.005 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 2. Section 3.72.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows: "Definitions.

For the purpose of this chapter, the words and phrases used herein shall have the following meanings unless otherwise clearly indicated by the context:

- (1) "Agency" means an establishment engaged in doing business for another.
- (2) "Arrest" means the act of stopping, and the taking or detaining in custody by authority of law.
- (3) "Authorized equipment and duty gear" means equipment and duty gear authorized by the Chief of Police that may be carried or used by private security officers permitted under this chapter.
- (4) "Basic responsibilities of a private security officer" means to observe and report crimes and incidents; on occasion to stop and question; to provide security against loss from fire or mechanical equipment failure and enforce property rules and

regulations; to control access to specific areas of a facility or building; and to act occasionally as a crowd monitor or to maintain order. These responsibilities shall include vehicle patrol when an approved classroom course on defensive driving has been completed. These responsibilities shall not include: authority beyond that of a private citizen, the right to use physical force in the performance of these duties except to protect the private security officer and others from clear and immediate threat of serious bodily harm, or acting in the capacity of a private security officer for other than a client for which the private security officer is contracted to provide services.

- (5) "Business" means commercial, industrial or professional dealings, activity or the supply of services engaged in as a means of livelihood.
- (6) "Client" means any person who engages the services of a private security agency.
- (7) "Chief of Police" as used in this chapter means the Chief of the Wichita Police Department or his or her authorized designee.
- (8) "Citizen's arrest" or "Arrest by a private person" shall have the meaning as set forth in K.S.A. 22-2403 and any amendments thereto, which states that a person who is not a law enforcement officer may arrest another person when: (1) A felony has been or is being committed and the person making the arrest has probable cause to believe that the arrested person is guilty thereof; or (2) any crime, other than a traffic infraction, has been or is being committed by the arrested person in the view of the person making the arrest.
 - (9) "For hire" includes all compensation paid directly or indirectly.

- (10) "License" means the authority to conduct business by a private security agency within the city limits.
- (11) "Licensee" means any person to whom a current license has been issued under this chapter authorizing such person to conduct business as a private security agency within the city limits.
- (12) "Person" means any natural person, corporation, partnership or association.
- (13) "Permit" means the authority to work as a private security officer in the city limits, and pursuant to the following classifications:
 - (a) "Temporary basic private security permit" means the permit issued to a person who meets the qualifications required of a private security officer but who has not yet completed the basic private security course. A person with a temporary basic permit may carry out the basic responsibilities of a private security officer, but is not authorized to carry any equipment weapons, including handcuffs.
 - (b) "Basic private security permit" means the permit issued to a person having completed the basic private security course, including a defensive driving classroom course given by either the city of Wichita or a private driving instructor approved in writing by the Chief of Police, and meeting the qualifications required of a private security officer. This permit shall allow the person to perform the basic duties of a private security officer including vehicle patrol. This permit shall not allow the person to carry any equipment other than handcuffs.

- (c) "Advanced private security permit" means the permit issued to a person who has completed both the basic and advanced private security courses and meets the qualifications required of a private security officer. This permit shall allow the individual to perform the basic duties of a private security officer to include vehicle patrol and the carrying of authorized equipment as approved in writing by the Chief of Police.
- (14) "Private detective" and "Private detective agency" shall have the meaning ascribed to said terms by K.S.A. 75-7b01(b) and (c) and any amendments thereto.
- (15) "Private security officer" means any person regularly employed by a person, firm or corporation, and whose duties, in addition to patrolling, guarding, transporting and watching the property of the employer or any client of the employer, include conducting investigations concerning the reputation or character of employees or prospective employees, and investigations concerning the location of property of the employer that becomes lost or stolen. For the purposes of this chapter, "private security officer" shall not include persons working for an armored car service.
- (16) "Private security agency" means any person, firm or corporation who engages in a business for hire to provide a protective service for the property of others, and whose duties and activities in that connection include patrolling, guarding, transporting or watching the property of a subscriber, purchaser or client under a contract or agreement to provide a protective service. For the purposes of this chapter, "private security agency" shall not include armored car services."

- SECTION 3. Section 3.72.015 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows: "Scope of regulations, authority of licensees and permitees.
- (1) The provisions of this Chapter are intended to regulate uniformed private security officers as that term is defined in Section 3.72.010(15) herein.
 - (2) It is not the intent of this Chapter to regulate any of the following:
 - (a) activities performed in a non-uniformed or plain-clothes capacity; or
 - (b) activities that fall under the regulation of the statutes of this state or any similar laws from other jurisdictions regulating private investigators;
 or
 - (c) activities that are allowed pursuant to the right to carry a firearm recognized pursuant to any federal, state or local law; or
 - (d) The business of transporting prisoners under a contract with any state or county government or the federal government.
- (3) No license or permit issued pursuant to this Chapter provides the holder thereof with any authority to direct traffic on the streets or highways of the City of Wichita.
- (4) A licensee or permitee under this Chapter who engages in any activity or business that involves the wearing of non-uniformed or plain clothing must have legal authority for such activity independent of the license or permit issued pursuant to this Chapter."

SECTION 4. Section 3.72.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows: "Application for private security permit—Approval of issuance.

- (1) The application for a private security permit shall contain:
 - (a) A full set of the applicant's fingerprints;
 - (b) Two passport-sized color photographs of the applicant taken within the preceding 30 days;
 - (c) Proof of age and identity which must be provided by presentation of a government-issued or other official or apparently official document that is not encrypted, containing a photograph and signature of the application;
 - (d) A letter from the agency stating that the applicant is being considered for employment;
 - (e) A drug screening test, the results of which are no older than 30 days preceding the date of application, which has been performed by a licensed laboratory certified to conduct such testing, indicating the applicant is free from the use of amphetamines, barbiturates, benzodiazepines, cannabinoid, cocaine metabolites, opiates and phencyclidine; and
- (2) All questions on the application form shall be answered truthfully and fully in the applicant's own handwriting. Falsifying or omitting any information requested on the application shall be cause for denying a permit. If a permit is denied for providing false information or making a false statement on an

application, the applicant shall be ineligible to reapply for a permit under this chapter for one calendar year from the date of the permit denial.

(3) Private security officers shall be required to satisfactorily complete the course of study for private security officers which has been approved in writing by the Chief of Police. Said course of study shall be completed within 90 days from the date of application; provided, however, that the Chief of Police may, upon written request and for good cause shown, extend the 90 days course completion requirement, or waive the training requirement. If an applicant has successfully completed the currently approved course or courses of study for private security officers within one calendar year prior to his or her application and can show satisfactory proof thereof, the applicant will be considered to have complied with the training requirement for the category of permit corresponding to the level of training completed.

SECTION 5. Section 3.72.160 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows: "Fees—Permits and training—New and renewal. The following fees are established for the permitting and training of private security officers. All fees are non-refundable and no fees shall be pro-rated:

(1) Permit fees:

- (a) Initial permit: \$45.00; for applications received on or after July 1, 2014, \$50.00.
- (b) Additional permit (for private security officers employed by more than one agency): \$35.00; for applications received on or after July 1, 2014, \$40.00.

- (c) Permit renewal: \$35.00; for applications received on or after July 1, 2014, \$40.00.
- (d) Additional permit renewal: \$35.00; for applications received on or after July 1, 2014, \$40.00.
- (e) Permit replacement: \$25.00; for applications received on or after July 1, 2014, \$30.00.
- (f) Fingerprinting and criminal history records check: Fee as set by the Kansas Bureau of Investigation

(2) Training fees:

- (a) Basic training: *
- (b) Advanced training: *

*Fees for training courses are set by designated training providers and are subject to review and approval by the Chief of Police."

SECTION 6. Section 3.72.210 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 7. Section 3.72.220 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 8. Section 3.72.230 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 9. Section 3.72.240 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 10. Section 3.72.250 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 11. Section 3.72.260 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 12. Section 3.72.270 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 13. Section 3.72.280 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 14. The originals of Section 3.72.005, Section 3.72.010, Section 3.72.015, Section 3.72.130, Section 3.72.160, Section 3.72.210, Section 3.72.220, Section 3.72.230, Section 3.72.240, Section 3.72.250, Section 3.72.260, Section 3.72.270 and Section 3.72.280 are hereby repealed.

SECTION 15. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon adoption and publication in the official city newspaper.

PASSED by the governing body of the City of Wichita, Kansas, this 17th day of June, 2014.

	Carl Brewer, Mayor	
Attest:		
	_	
Karen Sublett, City Clerk		
Approved as to Form:		
	_	
Gary E. Rebenstorf, Director of Law		

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: Ordinance Amending Sections 5.88.010 and 5.88.030 and Repealing Chapter

5.89 Relating to the Possession of Firearms

INITIATED BY: Law Department

AGENDA: New Business

Recommendation: Place ordinance on first reading.

Background: During the last legislative session, the Kansas Legislature passed House Bill 2578 relating to firearms, knives and other weapons. The Bill preempts municipalities from regulating in any manner the possession, carrying or transporting of firearms. It additionally precludes all city regulation of knives.

<u>Analysis</u>: The proposed amendments are required to bring the City's weapon ordinances into compliance with the preemption provisions set forth in K.S.A. 12-16,124.

The provisions of Section 5.88.010 regulating firearms and the manner of openly carrying a firearm and requirements for the lawful transportation of firearms are repealed. Section 5.88.030 regarding the possession and carrying of air rifles and BB guns within the City are also repealed.

City ordinances regulating knives were previously repealed in 2013, due to legislative enactments at that time.

All provisions of Chapter 5.89 relating to possession of a firearm by a minor are repealed.

HB 2578 establishes procedures for law enforcement agencies to dispose of weapons no longer needed for criminal prosecution. Necessary amendments are proposed to comply with these provisions. In this regard, the Bill requires that firearms and other weapons be forfeited or sold at public auction. Only if weapons are not sellable, due to their condition, are they allowed to be destroyed. Weapons utilized in the commission of certain felonies are required to be destroyed.

<u>Financial Considerations</u>: Additional staffing costs will be incurred to sort weapons and place those which are sellable up for auction or trade by the Department. These costs may be offset by revenue collected by the sale of the weapons. As weapons have never been sold previously, no estimate is available as to potential revenue to be derived from the sale of these weapons to offset additional staffing costs.

<u>Legal Considerations</u>: An ordinance has been drafted and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council place the ordinance on first reading and authorize the necessary signatures.

<u>Attachments</u>: Ordinances

CLEAN 05/27/2014

ORDINANCE NO. 49-763

AN ORDINANCE AMENDING SECTIONS 5.88.010 AND 5.88.030 AND REPEALING CHAPTER 5.89 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO WEAPONS AND FIREARMS AND REPEALING THE ORIGINAL OF SAID SECTIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 5.88.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Unlawful use of weapons. (1) Unlawful use of a weapon is knowingly:

- (a) Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, night stick, metal knuckles or throwing star;
- (b) Possessing with intent to use the same unlawfully against another, any bludgeon, sandclub, billy, blackjack, slingshot, nightstick, nun-chucks, sap gloves, tomahawk or any other dangerous or deadly instrument of like character;
- (c) Drawing a pistol, revolver or any other deadly weapon upon any person;

- (d) As used in this section, "throwing star" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.
- (2) Subsections (1)(c) of this subsection shall not apply to or affect any of the following:
 - (a) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;
 - (b) Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of a crime, while acting within the scope of their authority;
 - (c) Members of the Armed Services or Reserve Forces of the United States or the Kansas National Guard while in the performance of their official duty; or
 - (d) Individuals employed as security officers by the City of Wichita, who are authorized by the chief of police, with the approval of the city manager, to carry firearms, while acting within the scope of their authority as a security officer for the City of Wichita.
- (e) Historical re-enactors and actors when engaged in performances and demonstrations. Provided, however, this subsection shall only

apply to those performances and demonstrations which have been approved in advance in writing by the city manager or his designee.

- (3) Any person who violates any of the provisions of this section within the corporate limits of the city shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed \$2,500.00 or by imprisonment for not more than one year, or by both such fine and imprisonment.
- (4) In addition to the penalty for violation of any of the provisions of this section, it shall be the duty of the Municipal Court Judge in the discretion of the court:
 - (a) To order any weapon or firearm seized in connection with such violation to be forfeited to the city and the same shall be disposed of by the chief of police as set forth below whenever the weapon is no longer needed for evidence;
 - (b) The Chief of Police may dispose of any forfeited weapon by:
 - (i) Forfeiting the weapon or firearm to the Wichita Police Department for use within the police department, for sale to a properly licensed federal firearms dealer or for trading to a properly licensed federal firearms dealer by the police department for other new or used firearms or accessories for the police department's use; or
 - (ii) Forfeiting the weapon or firearm to the Kansas Bureau of Investigation for law enforcement, testing, comparison

or destruction by the Kansas Bureau of Investigation Forensic Laboratory;

- (iii) Forfeiting the weapon or firearm to the Sedgwick County Regional Forensic Science Center for testing, comparison or other forensic purposes; or
 - (iv) Selling the weapon or firearm at public auction.

If weapons are sold as authorized above, the proceeds from any such sale shall be credited to the asset seizure and forfeiture fund of the Wichita Police Department. All transactions involving weapons disposed of under this subsection must have the prior approval of the city manager. All sales of weapons are subject to review by the city council.

- (c) Any weapon which cannot be forfeited or sold pursuant to subsection (b), due to the condition of the weapon, and any weapon which was used in the commission of a felony as described in K.S.A. 21-5401, 21-5402, 21-5403, 21-5404 and 21-5405 and amendments thereto, shall be destroyed.
- (d) If a weapon is seized from an individual and the individual is not convicted of or adjudicated as a juvenile offender for the violation for which the weapon is seized, then within 30 days after the declining of charges or conclusion of prosecution of the case against the individual, including any period of appeal, the Wichita Police Department shall verify that the weapon is not stolen and upon such verification, shall notify the person from whom it was seized that the weapon may be retrieved. Such

notification shall include the location where such weapon may be retrieved.

- (e) Any stolen weapon confiscated in connection with any violation of this code shall be returned to the person entitled to possession, if known, when the same is no longer needed for evidence. All other weapons shall be disposed of as provided in subsection (6)(b) of this section.
- SECTION 2. Section 5.88.030 of the Code of the City of Wichita, Kansas, is hereby repealed:
- SECTION 3. Section 5.89.010 of the Code of the City of Wichita, Kansas, is hereby repealed.
- SECTION 4. Section 5.89.020 of the Code of the City of Wichita, Kansas, is hereby repealed.
- SECTION 5. Section 5.89.030 of the Code of the City of Wichita, Kansas, is hereby repealed.
- SECTION 6. Section 5.89.040 of the Code of the City of Wichita, Kansas, is hereby repealed.
- SECTION 7. Section 5.89.050 of the Code of the City of Wichita, Kansas, is hereby repealed.
- SECTION 8. The originals of Sections 5.88.010, 5.88.030, 5.89.010, 5.89.020, 5.89.030, 5.89.040 and 5.89.050 are hereby repealed.
- SECTION 9. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing be	ody of the City of Wichita, Kansas, this 17th day of June,
2014.	
	Carl Brewer, Mayor
	Call Blewer, Mayor
ATTEST:	
Karen Sublett, City Clerk	
A	
Approved as to Form:	
Gary E. Rebenstorf	
Director of Law	

First Published in The	Wichita Eagle on	

DELINEATED 05/27/2014

ORDINANCE NO	
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AN ORDINANCE AMENDING SECTIONS 5.88.010 AND 5.88.030 AND REPEALING CHAPTER 5.89 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO WEAPONS AND FIREARMS AND REPEALING THE ORIGINAL OF SAID SECTIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 5.88.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Unlawful use of weapons. (1) Unlawful use of a weapon is knowingly:

- (a) Selling, manufacturing, purchasing, possessing or carrying any bludgeon, sandclub, night stick, metal knuckles or throwing star;
- (b) Possessing with intent to use the same unlawfully against another, any bludgeon, sandclub, billy, blackjack, slingshot, nightstick, nun-chucks, sap gloves, tomahawk or any other dangerous or deadly instrument of like character;

(c) Setting a spring gun;

- (d) Carrying any pistol, revolver or other firearm concealed on one's person, while on property open to the public, except when on one's land or in one's abode or fixed place of business;
- (e) Carrying on one's person any unconcealed, loaded firearm, while on property open to the public, except when on one's land or in one's abode or fixed place of business, unless the firearm is carried in a holster with its safety in place and such weapon remains within the immediate control of the person at all times;
- (f) Carrying in any vehicle a loaded firearm which is under one's immediate control, while on property open to the public, except when on one's land or in one's abode or fixed place of business;
- (g) Carrying in any air, land or water vehicle an unloaded firearm that is not encased in a container which completely encloses the firearm:
- (h) Carrying a loaded or unloaded firearm in a courtroom or within City Hall, provided such building has "adequate security measures" as defined by K.S.A. 75–7c10 and amendments thereto;
- (i) (c) Drawing a pistol, revolver or any other deadly weapon upon any person;
- (j) (d) As used in this section, "throwing star" means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the

shape of a polygon, trefoil, cross, star, diamond or other geometric shape, manufactured for use as a weapon for throwing.

- (k) As used in this section, 'under one's immediate control' shall mean within reaching distance of the person.
- (2) Subsections (1)(a), (b), (c) (d), (e), (f) and (g), (h), and (i) of this subsection shall not apply to or affect any of the following:
 - (a) Law enforcement officers, or any person summoned by any such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer;
 - (b) Wardens, superintendents, directors, security personnel and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of a crime, while acting within the scope of their authority;
 - (c) Members of the Armed Services or Reserve Forces of the United States or the Kansas National Guard while in the performance of their official duty; or
 - (d) Manufacture of, transportation to, or sale of weapons to a person authorized under (a) through (c) of this subsection to possess such weapons.
 - (e) Qualified law enforcement officers or qualified retired law enforcement officers pursuant to the Law Enforcement Officers Safety Act, 18 U.S.C. 926B and 18 U.S.C. 926C and amendments thereto.

- (f)(d) Individuals employed as security officers by the City of Wichita, who are authorized by the chief of police, with the approval of the city manager, to carry firearms, while acting within the scope of their authority as a security officer for the City of Wichita.
- (3) Subsection (1)(d), (e) and (f) of this section shall not apply to or affect the following:
 - (a) Private security officers who have been issued and are in possession of both a valid permit as required by Section 3.72.040 of this Code, and any amendments thereto, and a valid firearm permit issued by the Chief of Police pursuant to Section 3.72.210 of this code, and any amendments thereto, and are actually engaged in the performance of the duties of their employment;
 - (b) Private detectives licensed by the state to carry the firearm involved while actually engaged in the duties of their employment;
 - (c) Detectives or special agents regularly employed by railroad companies or other corporations to perform full-time security or investigative service, while actually engaged in the duties of their employment;
 - (d) The State Fire Marshal, the State Fire Marshal's deputies or any member of a fire department authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto, while engaged in an investigation in which such fire marshal, deputy or member is authorized to carry a firearm pursuant to K.S.A. 31-157 and amendments thereto.

- (e) Special deputy sheriffs described in K.S.A. 19-827, and amendments thereto, who have satisfactorily completed the basic course of instruction required for permanent appointment as a part-time law enforcement officer under K.S.A. 74-5607a and amendments thereto.
- (f) Persons who are employed by a licensed armored car service and whose duties include providing secured transportation, protecting and safeguarding valuable cargo from one place to another and providing cash services for automated teller machines, all by means of bullet-resistant armored vehicles.
- (4) (e) Subsection (1)(i) of this section shall not apply to or affect head in performances and actors when engaged in performances and demonstrations. Provided, however, this subsection shall only apply to those performances and demonstrations which have been approved in advance in writing by the city manager or his designee.
- (5) Subsection (1)(d), (e), (f), and (g) shall not apply to any person who sells, purchases, possesses or carries a firearm, device or attachment which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841 et seq., in the name of such person and, if such person transfers such firearm, device or attachment to another person, has been so registered in the transferee's name by the transferor.
 - (6) Subsections 1(d), 1(f), and 1(g) shall not apply to:

- (a) Any person carrying a concealed weapon as authorized by K.S.A. 75 7c01 through K.S.A. 75 7c17, and amendments thereto.
- (b) The United States Attorney for the District of Kansas, the attorney general, or any district attorney or county attorney, while actually engaged in the duties of their employment or any activities incidental to such duties; any Assistant United States Attorney if authorized by the United States Attorney for the District of Kansas and while actually engaged in the duties of their employment or any activities incidental to such duties; any assistant attorney general if authorized by the attorney general and while actually engaged in the duties of their employment or any activities incidental to such duties; or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed and while actually engaged in the duties of their employment or any activities incidental to such duties. The provisions of this paragraph shall not apply to any person not in compliance with 75 7c01, et seq. and amendments thereto.
- (7) Subsection 1(d) shall not apply to licensed hunters or fishermen, while engaged in hunting or fishing;
- (8) Subsection 1(h) shall not apply to individuals employed as security officers by the City of Wichita, who are authorized by the chief of police, with the approval of the city manager, to carry firearms, while acting within the scope of their authority as a security officer for the City of Wichita.

- (9) (3) Any person who violates any of the provisions of this section within the corporate limits of the city shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed \$2,500.00 or by imprisonment for not more than one year, or by both such fine and imprisonment.
- (10) (4) In addition to the penalty for violation of any of the provisions of this section, it shall be the duty of the Municipal Court Judge in the discretion of the court:
 - (a) To order any weapon <u>or firearm</u> seized in connection with such violation which is not a firearm to be forfeited to the city and the same shall be <u>destroyed or caused to be destroyed disposed of</u> by the chief of police <u>as set forth below</u> whenever the weapon is no longer needed for evidence:
 - (b) To order any weapon seized in connection with such violation when no longer needed for evidentiary purposes, shall, in the discretion of the trial court, be: The Chief of Police may dispose of any forfeited weapon by:

(i) Destroyed;

(ii) (i) Forfeited Forfeiting the weapon or firearm to the Wichita Police Department for use within the police department, for sale to a properly licensed federal firearms dealer or for trading to a properly licensed federal firearms dealer by the police department for other new or used firearms or accessories for the police department's use; or

- (iii) (iii) Forfeited Forfeiting the weapon or firearm to the Kansas Bureau of Investigation for law enforcement, testing, comparison or destruction by the Kansas Bureau of Investigation Forensic Laboratory;
- (iii) Forfeiting the weapon or firearm to the Sedgwick

 County Regional Forensic Science Center for testing, comparison

 or other forensic purposes; or
 - (iv) Selling the weapon or firearm at public auction.

If weapons are sold as authorized above, the proceeds from any such sale shall be credited to the asset seizure and forfeiture fund of the Wichita Police Department. All transactions involving weapons disposed of under this subsection must have the prior approval of the city manager. All sales of weapons are subject to review by the city council.

- (c) Any weapon which cannot be forfeited or sold pursuant to subsection (b), due to the condition of the weapon, and any weapon which was used in the commission of a felony as described in K.S.A. 21-5401, 21-5402, 21-5403, 21-5404 and 21-5405 and amendments thereto, shall be destroyed.
- (d) If a weapon is seized from an individual and the individual is not convicted of or adjudicated as a juvenile offender for the violation for which the weapon is seized, then within 30 days after the declining of charges or conclusion of prosecution of the case against the individual, including any period of appeal, the Wichita Police Department shall verify

that the weapon is not stolen and upon such verification, shall notify the person from whom it was seized that the weapon may be retrieved. Such notification shall include the location where such weapon may be retrieved.

- (e)(e) Any stolen weapon confiscated in connection with any violation of this section other than subdivision (a) of this subsection code shall be returned to the person entitled to possession, if known, when the same is no longer needed for evidence. All other weapons shall be disposed of as provided in subsection (10)(a) and (b) (6)(b) of this section.
- SECTION 2. Section 5.88.030 of the Code of the City of Wichita, Kansas, is hereby repealed: "Air rifles, pellet guns and BB guns Carrying within the city.
 - (a) It is unlawful for any person to carry an air rifle, pellet gun or BB gun on the streets, alleys or public places within the corporate limits of the city unless the air rifle, pellet gun or BB gun is dismantled or in a scabbard.
 - (b) Any person who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed \$500.00 or by imprisonment for not more than one year, or by both such fine and imprisonment.
 - (c) In addition to the penalty for the violation of this section, the Municipal Court Judge may, in his or her discretion, order such air rifle, pellet gun or BB gun forfeited to the city and disposed of pursuant to Section 5.88.010(11).
- SECTION 3. Section 5.89.010 of the Code of the City of Wichita, Kansas, is hereby repealed. "Definitions.

For the purposes of this chapter, the following terms shall have the meaning ascribed to them in this section:

- (a) "Minor" means a person who is under the age of eighteen years.
- (b) "Firearm" means any loaded or unloaded pistol, revolver, rifle, shotgun or other weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosion, expanding gases or other combustion. Air rifles, air pistols and BB guns are included in this definition only if capable of expelling projectiles by the sudden release of compressed gas. This term shall not include a firearm which has been rendered unserviceable by steel weld in the chamber and marriage weld of the barrel to the receiver and which has been registered in the national firearms registration and transfer record in compliance with 26 U.S.C. 5841, et seq., and any amendments thereto."

SECTION 4. Section 5.89.020 of the Code of the City of Wichita, Kansas, is hereby repealed. "Possession of a firearm by a minor prohibited—Exceptions.

- (a) Unless otherwise specifically provided herein, it shall be unlawful for a minor to possess any firearm within the City of Wichita, except when the minor is in the presence of and under the direct supervision of a parent, stepparent, grandparent, stepgrandparent, or legal guardian.
- (b) Any minor who is not in the presence of and under the direct supervision of his or her parent, stepparent, grandparent, stepgrandparent, or legal guardian may only possess a firearm in the City of Wichita under the following circumstances:

- 1. During a hunter education class held pursuant to K.S.A. 32-920 and conducted by a Kansas hunter education instructor who is certified by the Kansas Department of Wildlife and Parks, provided said possession is under the supervision of the instructor;
- 2. During a firearms instructional or safety training class taught by an instructor certified by the National Rifle Association or other nationally recognized hunting, target or sports shooting organization, provided said possession is under the supervision of the instructor;
- 3. While transporting an unloaded firearm to and from an excursion for lawful hunting of game birds or animals, provided:
 - (a) The minor is in possession of a valid hunting license, if said license is required by state or federal law for the purposes of the hunting excursion;
 - (b) The minor is in possession of a valid hunter education certificate issued to said minor;
 - (c) The firearm, during transportation, is unloaded and is stored in a case, scabbard, or other container which completely encloses the firearm."

SECTION 5. Section 5.89.030 of the Code of the City of Wichita, Kansas, is hereby repealed. "Forfeiture of firearms possessed by a minor.

Except as provided in Section 5.89.040, any firearm seized in connection with a violation of this Chapter shall be disposed of pursuant to Section 5.88.010(8)(a) and (b)

of the Code of the City of Wichita."
SECTION 6. Section 5.89.040 of the Code of the City of Wichita, Kansas, is hereby
repealed. "Stolen weapons.
Any stolen firearm confiscated in connection with any violation of this chapter
shall be returned to the person entitled to possession, if known, when the same is no
longer needed for evidence."
SECTION 7. Section 5.89.050 of the Code of the City of Wichita, Kansas, is hereby
repealed. "Penalty.
Any minor violating the provisions of this chapter shall be dealt with in
accordance with the Kansas Juvenile Offenders Code, K.S.A. 38 1601, et seq., and any
amendments thereto."
SECTION 8. The originals of Sections 5.88.010, 5.88.030, 5.89.010, 5.89.020, 5.89.030,
5.89.040 and 5.89.050 are hereby repealed.
SECTION 9. This ordinance shall be included in the Code of the City of Wichita,
Kansas, and shall be effective upon its passage and publication once in the official city paper.
PASSED by the governing body of the City of Wichita, Kansas, this day of
, 2014.
Carl Brewer, Mayor
ATTEST:
Karen Sublett, City Clerk

Approved as to Form:
Gary E. Rebenstorf
Director of Law

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: Water Conservation Rebate Program (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

Recommendation: Authorize the \$450,000 Water Conservation Rebate Program.

Background: The City of Wichita offered a rebate program in 2013 to incentivize utility customers to install water efficient items. The program had a budget of \$1 million, of which \$600,000 remains unspent. Over 2,700 customers participated, with rebates approved for more than 3,800 devices and appliances. Water savings from the program is estimated at 0.25 Million Gallons per Day, which results in reducing total water usage by 0.44%.

<u>Analysis:</u> Conserving water is an important feature of long-term water supply planning. It is a component of all the final options of adding new water sources to provide drought protection through 2060. Offering a modified rebate program would provide two benefits: the program would create data on participation rates that can guide future efforts, and water demand would be reduced.

In 2014, a new rebate program is proposed. It would allow for all active water utility customers to participate in the program. All of the same devices, and some new items, would be a part of this new program. Like last year, rebates would be offered for water efficient toilets, clothes washers, dishwashers, smart irrigation controllers, and rain barrels. In addition, this year's program would cover water efficient urinals, rain sensors, and dual-flush convertors that allow toilets to use less water when handling lighter volumes.

The rebates would be available to those replacing fixtures, not in new construction. Rebates would be at \$100 per item, with two exceptions. Rain barrels would be reimbursed up to \$75, and dual-flush converters would be reimbursed up to \$50, depending on cost.

Customers would again be limited to five rebates. The rebate program would begin on July 1, 2014. The rebate offer would be available through the end of 2014, or until the \$450,000 budget is exhausted. Rebates would be retroactive to January 1, 2014, in order to be fair to those who installed such devices and fixtures when the water planning discussions were ongoing.

The program will be marketed using City7, the City's website, social media, bill inserts, messages on hold, and a news conference. To enable wholesale customers to offer rebate programs, wholesale customers will have access to the same proportion of the rebate budget as was provided last year.

<u>Financial Considerations:</u> The \$450,000 in rebate funds would be drawn from the \$600,000 in unspent funding from last year's rebate program, so there is no impact on water rates. In addition, the program will spend up to \$50,000 from the existing Water Conservation Program budget for administration of the program. These funds are already included in the 2014 Adopted Budget.

Legal Considerations: There are no legal considerations associated with this action.

Recommendations/Actions: It is recommended that the City Council authorize the \$450,000 Water Conservation Rebate Program.

Attachments: None.

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: Water Meter Upgrade Program (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

Recommendation: Approve the contract with National Meter and Automation, Inc., adopt the Resolution, and authorize the necessary signatures.

Background: The City Council authorized a contract with National Meter and Automation on June 19, 2012 in order to upgrade water meters and fully automate the residential meter reading system. The decision was based on the use of \$32,603,920 in Capital Improvement Program (CIP) funds to pay for the five-year project, with \$16,400,000 of the project budget initially authorized. The contract includes four one-year renewals. The project is replacing all residential water meters installed more than 10 years ago and is eliminating the need for less-efficient manual meter reads.

<u>Analysis:</u> National Meter and Automation has performed well during its first two years of operation. It has opened a warehouse in Wichita and staffed its operations with local employees. Meters have been changed out faster than originally anticipated. Customer service has been stellar, with multiple steps taken to ensure minimal impact on water users. In addition, National Meter and Automation has worked with its suppliers to secure unique warranty and meter savings that are being passed along to the City of Wichita. These steps have saved the City \$684,114 to date and another \$169,414 in savings is expected over the remaining years of the project.

City staff is testing a sampling of meters that are removed from the system – this testing regimen has shown that 29% of the replaced meters are recording lower volumes than are actually used. Thus, the new meters are more accurate and are yielding additional revenue. It is projected that the new meters will generate an average of \$4.6 million more per year due to gains in accuracy. The meters will generate \$46 million in additional revenue over 10 years, which is more than the project's \$32.6 million cost. This is a 41% return on the City's investment.

The project is expected to be completed on time and within budget. The faster pace of meter change-outs, coupled with savings provided by the contractor, should allow for additional work to be completed on commercial two-inch meters. The plan is to complete all residential meters, then allocate any remaining funds on the commercial meters. This too should result in accuracy gains and increased revenue streams.

A new contract is proposed to lock in National Meter and Automation to complete the meter project. This approach has two advantages over the current agreement, which provides annual renewal periods during which pricing can change. First, it allows the City to lock its prices for the remainder of the project. The pricing in the contract allows for all residential and potentially some commercial meters to be upgraded. Second, it secures a contractor that has provided exemplary service to utility customers and has provided valuable savings to the City.

Financial Considerations: No new funding is being requested. The City Council initiated this project on June 19, 2012, at which time the project was to be funded with the \$32,603,920 in CIP funds for meter replacements. Previous City Council action initiated the first \$16.4 million. The recommended action would initiate the remaining \$16,203,920 of the project budget. All funds are included in the 10-year CIP and the rate planning models, so no rate impact will be created with this action.

<u>Legal Considerations:</u> The Law Department has reviewed and approved the contract and bonding resolution as to form.

<u>Recommendations/Actions:</u> It is recommended that the City Council approve the contract with National Meter and Automation, Inc., adopt the bonding resolution, and authorize the necessary signatures.

<u>Attachments:</u> Contract with National Meter and Automation, Inc., bonding resolution, and Notice of Intent.

RESOLUTION NO. 14-162

A RESOLUTION AMENDING AND SUPPLEMENTING RESOLUTION NO. 12-168 OF THE CITY OF WICHITA, KANSAS WHICH DECLARED IT NECESSARY TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY, TO ISSUE REVENUE BONDS FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH INTENTION IN THE MANNER REQUIRED BY LAW.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State; and

WHEREAS, the City Council of the City (the "Governing Body"), has heretofore by Ordinance No. 39-888, passed May 26, 1987 and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the City of Wichita, Kansas Water and Sewer Utility (the "Utility"); and

WHEREAS, the City is authorized under the Constitution and laws of the State of Kansas, including K.S.A. 10-1201 *et seq.*, as amended and supplemented by Charter Ordinance No. 211 of the City (collectively, the "Act"), to issue revenue bonds to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility;

WHEREAS, the Governing Body has heretofore by Resolution No. 12-168 of the City (the "Prior Resolution), found and determined that it is necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility in the following manner:

Installation of Automated Water Meters (W-028)

(the "Project") at an estimated cost, including related design and engineering expenses of \$16,400,000; and

WHEREAS, the Prior Resolution also determined to be necessary and advisable to issue revenue bonds of the City under the authority of the Act, in an aggregate principal amount not to exceed \$16,400,000 in order to pay all or a portion of the costs of the Project and related reserves, interest on financing and administrative and financing costs (the "Bonds") to be payable from the revenues of the Utility; and

WHEREAS, additional capital improvement program funding became available and it is therefore necessary to amend the Prior Resolution.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AS FOLLOWS:

Section 1. Amendment. **Section 1 and Section 3** of the Prior Resolution is hereby amended to read as follows:

(e.g.)

Section 1. Project Authorization. It is hereby determined that it is necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility in the following manner:

Installation of Automated Water Meters (W-028)

(the "Amended Project") at an estimated cost, including related design and engineering expenses of \$32,603,920. It is hereby further authorized, ordered and directed that the Amended Project be acquired, constructed and/or installed in accordance with plans and specifications therefor prepared under the direction of the City Engineer or designate and approved by the Governing Body; said plans and specifications to be placed on file in the offices of the Utility. The Amended Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

Section 3. Project Financing. In order to pay all or a portion of the costs of the Amended Project and related reserves, interest on financing and administrative and financing costs, it is hereby found and determined to be necessary and advisable to issue revenue bonds of the City under the authority of the Act, in an aggregate principal amount not to exceed \$35,212,234 (the "Bonds"). The Bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the Amended Project in excess of the proceeds of the Bonds, if any, shall be paid from unencumbered moneys of the Utility which will be available for that purpose. The Bonds may be issued to reimburse expenditures authorized by the Prior Resolution made on or after the date which was 60 days before the date of adoption of the Prior Resolution and to reimburse additional expenditures authorized by this Resolution, which were made 60 days before the date of adoption of this Resolution, all pursuant to Treasury Regulation §1.150-2.

Section 2. Notice. Before issuing the Bonds authorized herein, there shall be published one (1) time in the official newspaper of the City, a notice of the intention of the Governing Body to undertake the Amended Project and to issue the Bonds (the "Notice"); and if within fifteen (15) days after the publication of such Notice, there shall be filed with the City Clerk, a written protest against the Amended Project or the issuance of the Bonds, signed by not less than twenty per cent (20%) of the qualified electors of the City, the Governing Body shall thereupon submit such proposed Amended Project and the Bonds to the electors of the City at a special election to be called for that purpose as provided by the Act. If no sufficient protest is filed with the City Clerk within the period of time hereinbefore stated, then the Governing Body shall have the authority to proceed with the Amended Project and issuance of the Bonds.

Section 3. Repealer; Ratification. In the event no sufficient protest petition is filed in accordance with the Act against the Amended Project and the Bonds as set forth in **Section 2** hereof, Section 1 and Section 3 of the Prior Resolution is hereby repealed; and the rest and remainder thereof is hereby ratified and confirmed. If a protest petition is filed and/or if a required referendum does not approve the Amended Project and the Bonds, the Prior Resolution remains in full force and effect with respect to the Project and the Bonds authorized therein.

Section 4. **Effective Date**. This Resolution shall be in full force and effect from and after its adoption by the Governing Body.

ADOPTED by the City Council of the City of Wichita, Kansas, by not less than two-thirds of the				
members voting in favor thereof, on June 10, 2014.				
(SEAL)				
	Carl Brewer, Mayor			
ATTEST:				
Karen Sublett, City Clerk				
APPROVED AS TO FORM:				
Gary E. Rebenstorf, Director of Law				

(Published in <i>The Wichita Eagle</i> , on)
NOTICE
TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS
You are hereby notified that the City Council (the "Governing Body") of the City of Wichita, Kansas (the "City"), by Resolution No, duly adopted, 2014, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility, which is owned and operated by the City (the "Utility"), in the following manner:
Installation of Automated Water Meters (W-028)
(the "Project") at an estimated cost, including related design and engineering expenses of \$32,603,920.
In order to finance all or a portion of the costs of the Project and related reserves, interest on financing and administrative and financing costs, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds an aggregate principal amount not to exceed \$35,212,234 under the authority of K.S.A. 10-1201 <i>et seq.</i> , as amended and supplemented by Charter Ordinance No. 211 of the City (the "Bonds"). The Bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of the Bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose.
This Notice shall be published one time in the official newspaper of the City; and if, within fifteen (15) days from and after the publication date hereof, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the Bonds, which protest is signed by not less than twenty percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the Bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If no sufficient protest to the Project and the issuance of the Bonds is filed within said period, then the Governing Body shall have the authority to proceed with the Project and issuance of the Bonds.
BY ORDER of the Governing Body of the City of Wichita, Kansas, on
/s/ CARL BREWER, Mayor

ATTEST:

/s/ Karen Sublett, City Clerk

CONTRACT AMENDMENT FOR WATER METER AND AMR REPLACEMENT & INSTALLATION

THIS CONTRACT AMENDMENT is entered into this 3rd day of June, 2014, by and between the CITY OF WICHITA, KANSAS, A Municipal Corporation, hereinafter called "CITY", and NATIONAL METER AND AUTOMATION, INC., 1635 E. 37th Street North, Suite 6, Wichita, Kansas, 67210, hereinafter called "CONTRACTOR".

WITNESSETH THAT:

WHEREAS, on the 19TH day of June, 2012, the above-named parties entered into a contract for WATER METER AND AMR REPLACEMENT & INSTALLATION for the Public Works & Utilities Department / Water Distribution Division for the City of Wichita as per the proposal and specifications on May 11, 2012 and as approved by the City Council on June 10, 2012; and:

NOW, THEREFORE, the above named parties hereby agree, covenant and contract with each other that the terms of the original contract dated the 19th day of June, 2012 for Water Meter and AMR Replacement & Installation for the Public Works & Utilities Department / Water Distribution Division for the City of Wichita are hereby reaffirmed and re-executed for and on behalf of these parties except for the following amendment, modification and change as approved by City Council on June 3, 2014:

THE TOTAL MAXIMUM CONTRACT AMOUNT is \$17,825,959.15 for the remainder of this contract as per attached Exhibits B, C and D.

Terms. This contract will now be Cash Basis Compliance. The term of this contract amendment shall be in effect from **July 1, 2014 through June 30, 2017**. However, this contract is subject to cancellation by the **CITY**, at its discretion at any time within the contract term upon thirty (30) days written notice to the **CONTRACTOR**.

Representative's Authority to Contract. By signing this contract amendment, the representative of the contractor or vendor represents that he or she is duly authorized by the contractor or vendor to execute this contract amendment, and that the contractor or vendor has agreed to be bound by all its provisions.

IN WITNESS WHEREOF, the parties hereto have executed this contract amendment the day and year first above written.

ATTEST:	THE CITY OF WICHITA
Janis Edwards Deputy City Clerk	Carl Brewer Mayor
APPROVED AS TO FORM:	NATIONAL METER AND AUTOMATION, INC.
Gary E. Rebenson Director of Law	Signature
	Print Signature Name
	Title (President or Corporate Officer)

Exhibit A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - The contractor shall observe the provisions of the Kansas Act against
 Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not
 discriminate against any person in the performance of work under the
 present contract because of race, religion, color, sex, disability, and age
 except where age is a bona fide occupational qualification, national origin
 or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
 - The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
 - 2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
 - 3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
 - 4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
 - 5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

- 1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
- 2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

EXHIBIT B

National Meter and Automation, Inc.

RFP No: FP240028 Third Year To Project Completion Price Variations - June 20, 2014

	_							
Third Year to Implementation Project Completion	+		+-		+		Ţ.	
Meter Model		<u>M25</u>	+	M25	+-	1425	┼~	
Size	`	5/8 x 5/8"	+	<u>14123</u> 5/8x3/4"	+-	<u>M35</u>	┿	<u>M40</u>
Description:	┿	70 X 3/6	+-	3/6X3/4"	+	3/4"	+	1"
Scheduled Changeouts with 2 Port ERT	╁		+-	-	╁-		╁-	
Full Meter Replace-With ADE, 100W ERT, Install	\$	224.87	Ś	224.07	+-		+	
	12	224.07	+>	224.87	\$	246.81	\$	257.24
RETRO-Fit - 100W ERT & ADE Change Out-Keep Meter	\$	194.98	\$	104.00	+		 	
To to have out ricep weter	12	194.98	12	194.98	\$	194.98	<u> \$</u>	194.98
ERT Warranty Program Change Out With Meter	\$	102.04	-	400.01	+		1	<u> </u>
	13	182.91	\$	182.91	\$	204.86	\$	215.25
ERT Warranty Program Change - Retro Fit	-	452.04	 	450.04	<u> </u>		Ļ	
	\$	153.01	\$	153.01	\$	153.01	\$	153.01
Scheduled Changeouts with 3 Port ERT	├		↓_		_		↓_	
Full Meter Replace-With ADE, 100W ERT, Install	_		 _		<u> </u>		L	
The state of the s	\$	241.42	\$	241.42	\$	263.36	\$	273.79
RETRO-Fit - 100W ERT & ADE Change Out-Keep Meter	_		_	<u> </u>	<u>L</u> .		L.	
20017 Ett & ADE Change Out-keep Meter	\$	211.53	\$_	211.53	\$	211.53	\$	211.53
ERT Warranty Program Change Out With Meter	_		<u> </u>					
Arettain, Logism Change Out Audi Metel	\$	199.46	\$	<u> 199.46</u>	\$	221.41	\$	231.80
ERT Warranty Program Change - Retro Fit	_		<u> </u>		_			
2. Validately Frogram Change - Ketro Fit	\$	169.55	\$	169.55	\$_	169.55	\$	169.55
Items Relow Are For Out of Books West (Day)								
tems Below Are For Out of Route Work (Random)	-;							
Full Meter Replace-With ADE, 100W ERT, Install	\$	283.17	\$	283.17	\$	305.11	\$	315.54
PETROLEH 100M/EDT 8 ADE CI	<u> </u>							
RETRO-Fit - 100W ERT & ADE Change Out-Keep Meter	\$_	253.28	\$	253.28	\$	253.28	\$.	253.28
PT Warrant Process Cl.								
ERT Warranty Program Change Out With Meter	\$	241.21	\$	241.21	\$	263.16	\$	273.55
DT Women's Day of	<u>.</u>							
RT Warranty Program Change - Retro Fit	\$	211.31	\$	211.31	\$	211.31	\$	211.31



Proposed Pricing for Third Year To Project Completion - Plan Budget

Public Works Utility Department Extension of: RFP No: FP240028 June 20, 2014

Description	Estimated Qty	Unit Cost
Itron 100W ERT with 3 ports for accoustic leak detection - Adder Price	Each	\$16.55
Itron External ERT (TTL) Antennae (Booster Ant.)	Each	\$24.15
Rodent-proof Wire	Each	
Record GPS Coordinates for each meter box - Submeter	Each	\$12.75
Drill hole in current meter box lid to mount ERT	Each	\$2.75 \$2.75
New lid with pre-drilled hole	Each	\$16.00
New Composite meter lid (required for AMI pilot project installations)	Each	\$27.00
New Meter Box Only - Materials (Does NOT include Installation)	Each	\$31.50
New Meter Box Ring and Lid Only - Materials (Does NOT Include Installation	Each	\$67.15
Remove dirt & debris, clean meter and yoke	Each	\$42.40
expose Meter Pits	Each	\$42.40
eplace Damaged Meter Pits (Labor and Installation ONLY)	Each	Time & Material
mergency Repair to Service line/Setters	Each	Time & Material
cheduled Repair to Service Line/Setters	Each	Time & Material
linor or Major Site Restoration	Each	Time & Material
oncrete (or Asphalt) Driveway Removed & Replaced	Each	Time & Material
GI Box for Customer to read their own meter with iPhone or iPad	Each	\$159.00
stallation of new 1 1/2" meter and ERT (Does not include cost of meter/ERT/Materials)	Each	\$600.00
stallation of new 2" meter and ERT (Does not include cost of meter/ERT/Materials)	Ęach	\$600.00



Proposed Pricing for Third Year To Project Completion - Plan Budget

Public Works Utility Department Extension of: RFP No: FP240028 June 20, 2014

BID ITEMS Description	Qty	Unit Cost	Proposed Price
Replace 40w, 50w, and 60w ERT's with 100 W ERT's and 5/8" Meter	5,506	\$224.87	\$1,238,134.22
Replace 40w, 50w, and 60w ERT's with 100 W ERT's and 3/4" Meter	607	\$246.81	\$149,813.67
Replace 40w, 50w, and 60w ERT's with 100 W ERT's and 1" Meter	3,737	\$257.24	\$961,305.88
Total .	9,850		\$2,349,253.77
Replace Meter w/100 W ERT & 5/8" Meter-Current Read Type Manual	51,912	\$224.87	\$11,673,451.44
Replace Meter w/100 W ERT & 3/4" Meter-Current Read Type Manual	5,610	\$246.81	\$1,384,604.10
Replace Meter w/100 W ERT & 1" Meter-Current Read Type Manual	6,966	\$257.24	\$1,791,933.84
Total	64,488	<u> </u>	\$14,849,989.38
Estimate of Optional Bid Items (Page 2)			\$626,716.00
Total			\$626,716.00
Third Year to Completion - <u>Total:</u>	74,338		\$17,825,959.15

Note: Quantities, meter sizes, and types are estimates obtained from the City of Wichita Master Data File and are subject to change. Exact quantity, size, and type will be determined by NMAAI personnel during the QA1 installation step. All quantities are represented with a full meter changeout. Retro Fits are possible and will also be determined during the QA1 step. For additional Retro Fit and ERT warranty pricing, please refer to the Price Variations Sheet. In addition, National Meter and Automation, Inc. will make every effort to complete the number of installs listed during the next timeframe. Exact Install dates are subject to change due to weather, Acts of God, product availability, and other factors beyond the control of National Meter and Automation, Inc.

City of Wichita City Council Meeting June 3, 2014

TO: Mayor and City Council

SUBJECT: New Golf Division POS Software (Districts I, III, IV, VI)

INITIATED BY: Department of Park and Recreation and Information Technology (IT)

AGENDA: New Business

Recommendation: Approve the contract and funding.

Background: The need for a comprehensive Golf/Recreation software program was identified in 2012 to assist with program registration, scheduling and marketing. Since the golf operation was under review, it was determined that the new software package would focus solely on recreation and that a stand-alone golf system replacement would be reviewed at a later date. The Board of Park Commissioners recommended at the December 2012 Council Workshop the need to move forward and purchase a comprehensive golf software package.

In August 2013, a Request for Proposal (RFP) was distributed with responses due by September 6, 2013. A total of eight responses to the RFP were received and evaluated. The Staff Screening and Selection Committee, consisting of eight departments, including IT and Finance, reviewed the proposals and selected four vendors to provide demonstrations/presentations.

<u>Analysis</u>: The Staff Screening and Selection Committee selected Club Prophet Systems, with over 1,200 installs in 49 states and eight countries. The overall package includes point of sale, inventory control, customer management, reports, tee sheets, online reservations, food and beverage and email marketing. Club Prophet Systems is a cloud hosted solution and utilizes Amazon virtual servers for both data and web and will be responsible for service and maintenance. To ensure business continuity, software will be installed locally in case internet connection to the host servers is interrupted. The software will function independently when the internet connection is lost and sync when connectivity is restored. The Club Prophet Systems software provides the most functionality, system maturity, capabilities and value of the four systems reviewed. It was the unanimous choice by the committee.

Financial Considerations: As a cloud hosted solution, there are three components of costs for the Club Prophet System Software. The first is annual hosting costs of \$24,900 which has been negotiated not to increase over a five year term. The second is a one-time cost for initial implementation and training, which is "not to exceed" the \$3,000 agreement. The third is a hardware upgrade to make it compliant with the Club Prophet System software. This cost is estimated at \$6,600. All funding will come from the Information Technology Software Replacement Fund. This is a five-year contract with total expenses of \$134,100. Annual savings to the Golf Fund of \$16,000 (\$3,600 in software maintenance fees and \$12,400 in IT charges) are projected, with a total five- year savings to the Golf Fund of approximately \$80,000.

<u>Legal Considerations:</u> This contract has been reviewed and approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the contract, approve the funding and authorize the necessary signatures.

Attachments: Club Prophet Systems Contract

Contract ID#	
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CITY OF WICHITA

Information Technology Agreement

This Information Technology Agreement ("Agreement") is made between the City of Wichita, hereinafter referred to as the "City" and Club Prophet Systems, Inc., hereinafter referred to as the "Contractor" and collectively referred to as the "Parties".

WHEREAS, the Contractor is a provider of high technology products and services for which City Code section 2.64.020(g) allows the Purchasing Manager to directly negotiate for services on a non-competitive basis, and

WHEREAS, the Contractor has represented that it is capable of implementing the Scope of Work as contained herein and the City has selected the Contractor as the offeror most advantageous to the City of Wichita; and

WHEREAS, all terms and conditions of the City's solicitation and the Contractor's response to such document(s) are incorporated herein by reference; and

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. Definitions.

- A. <u>Acceptance</u> shall mean the approval of all Deliverables by the CIO of the City or designated representative.
- B. <u>Anonymous Data</u> shall mean anonymous web data that by virtue of the method of collection can never reasonably be connected with the person providing.
- Change Request shall mean the document utilized to request changes or revisions in the Scope of Work.
- D. <u>Chief Information Officer (CIO)</u> shall mean the CIO of the City of Wichita or designated representative.
- E. <u>Compliant Product</u> shall mean a product or service that implements all of the current PCI Security Standards Council Required Elements.
- F. <u>Contractor Data Libraries</u> shall mean information, which may or may not be publicly available, that is selected, gathered and assembled by the Contractor into compilations in various forms and formats for use with the system components of the licensed application.
- G. <u>Deliverable</u> shall mean any verifiable outcome, result, service or product that must be delivered, developed, performed or produced by the Contractor as defined in Paragraph 2, Scope of Work.
- H. <u>Emergency Support</u> shall be defined as technical support provided by the Contractor outside of normal support hours for any problem or issue that is impacting the City's ability to conduct business and cannot wait until the next business day to resolve. This support applies only for the software that is the subject of this Agreement.
- I. Know How shall mean all technical information, data and knowledge including, but not limited to, all documents, computer storage devices, drawings, flow charts, plans, proposals, records, notes, memoranda, manuals and other tangible items containing, relating or causing the enablement of any Intellectual Property developed under this Agreement.

Contract ID#	
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- J. <u>Intellectual Property</u> shall mean any and all proprietary information developed pursuant to the terms of this Agreement.
- K. <u>PA-DSS</u> shall mean Payment Application Data Security Standard which provides a framework for software vendors to develop secure payment applications
- L. <u>Payment Invoice</u> shall mean a detailed, certified and written request for payment of services rendered from the Contractor to the City. Payment Invoice(s) must contain the fixed price Deliverable cost and identify the Deliverable for which the invoice is submitted.
- M. <u>PCI</u> shall mean Payment Card Industry.
- N. Project shall mean a process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project approval is given by the City Project Manager and verified by the City CIO. Under the terms of this Agreement the Project is defined within Paragraph 2, Scope of Work.
- O. <u>Project Manager</u> shall mean a qualified person from the City responsible for all aspects of the Project. Under the terms of this Agreement, the City Project Manager shall be the designated representative assigned by the City.
- P. Required Element shall mean any element of the Specification, however identified, including use of the terms "Mandatory", "Alternate", or "Optional".
- Q. <u>Software</u> shall mean any software or other products, including the licensed application, delivered or utilized in conjunction with the licensed application under this Agreement.
- R. <u>Subscription</u> shall mean the annual fee for license renewal and maintenance of an operational Club Prophet System including maintenance and technical support services.

2. Scope of Work.

A. The Contractor shall perform the following work:

The Contractor will install, configure, train, license, support, and maintain the Contractor's Club Prophet Systems application for the replacement of the current City's Golf Point of Sale (POS) system as specified in the solicitation and Attachment A to this Agreement, "Club Prophet Systems Hardware Requirements".

This Scope of Work includes:

1) Project Initiation (Kick-off).

The Contractor will perform the Project Initiation thirty (30) calendar days prior to the installation date either through a telephone or video conference call with the City. Prior to the call, the Contractor will forward, via email, the Contractor's Installation Guide (if required) that details the installation process and steps including, but not limited to those processes associated with the configuration, testing, and product/system acceptance that will be completed during the project. The key tasks include:

- Formally transition and introduce the project team and their respective responsibilities.
- Define the success criteria of the City to meet expectations and achieve appropriate outcomes and the metrics to measure those outcomes.
- Discuss potential risks/issues based upon the City's and the Contractor's experience.

Contract ID#	
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- Review the Contractor's Installation Guide (if required) that outlines the installation process and steps.
- Establish the project schedule including, but not limited to:
 - Milestones
 - o Dependencies
 - o Contingencies
 - o Resources
 - Durations

This schedule will be created by the Contractor and maintained by the City's Project Manager in coordination with the Contractor's and City's project teams.

- Define the project Communications Plan covering methods used to gather and store information; limits, if any, on who may give direction and to whom; reporting relationships; list of contact information; schedule for distribution of information; weekly status meetings; and a method to update the communications plan as the project progresses.
- Club Profit Systems Application Installation including Configuration and Testing.
 - The Contractor will install, configure, and test Club Profit Systems application on City owned computing and peripheral hardware that meet the Contractor's hardware specifications defined in the attached Exhibit A.
 - The Contractor will provide, on request by the City, and maintain on file evidence of PCI PA-DSS compliance and validation, including its annual self-assessment, for the software that is the subject of this Agreement. This evidence may be subject to an annual audit by the City or its designated representative during the term of this Agreement.
 - The City will provide and manage the physical network and security infrastructure, hardware, as defined in the attached Exhibit A, and the related hardware setup/installation and hardware support.
 - The City will establish, if necessary, a merchant account thru a CPS approved platform and provide to Contractor the merchant account information prior to the start of the application installation.
 - All software customizations shall require prior written approval, through the Change Management process, as defined in Paragraph 13. All Customizations will be documented accordingly and maintained as defined in Paragraph 2 E, Application License.
 - Expenses for installation are additional and will be billed at cost. Expenses shall be limited to expenses as defined in Paragraph 2 D, Contractor Reimbursable Expenses.

3) Training

• The Contractor will provide, at no additional cost, ten (10) days of onsite training to City staff that includes operational and administration training on the Club Profit Systems application as installed and configured by the Contractor. Training will be conducted at a training facility identified by the City. All training materials and related documentation will be provided by the Contractor.

- Expenses for training are additional and will be billed at cost. Expenses shall be limited to expenses as defined in Paragraph 2 D, Contractor Reimbursable Expenses.
- Additional training may be requested and scheduled through the Contractor and is available at a daily rate of Eight hundred dollars (\$800.00) or hourly rate of One hundred dollars (\$100.00), plus costs. A minimum of eight (8) hours will be required for all additional on-site training. Expenses shall be limited to expenses as defined in Paragraph 2 D, Contractor Reimbursable Expenses.

B. Services will be performed for the City of Wichita at the designated golf courses:

- 1) Auburn Hills
- 2) L. W. Clapp
- 3) Tex Consolver
- 4) MacDonald
- 5) Arthur B. Sim

C. Deliverable(s)

Number	Deliverable	Date Due	Price
1	Project Initiation, Installation Guide, PA-DSS Implementation Guide, and Project Schedule.	08/01/2014	\$12, 450.00
2	Club Profit Systems Product/System Installation including Configuration and Testing	08/01/2014	Included
3	Product/System Training	10/06/2014 through 10/10/2014	Included
4	Final Project Initiation, Installation, and Training Invoice	10/13/2014	\$12, 450.00
5	1 Year Application, License, Support, and Maintenance Subscription	10/13/2014	Included
6	Optional 1 Year Application, License, Support, and Maintenance Subscription	At Term Renewal	\$24,900.00

D. <u>Contractor Reimbursable Expenses</u>

Reimbursable expenses include coach class air fare, airport parking, economy class vehicle rental, cab, or public transportation, parking and tolls, fuel, reasonable lodging and meals, excluding alcohol, and other travel incidentals required to fulfill the Agreement. The Contractor shall provide the City with an estimate of reimbursable expenses for approval prior to any scheduled travel. Upon completion or execution of the prior-approved travel, the Contractor shall submit an invoice to the City CIO for actual expenditures incurred and shall attach receipts to the invoice requesting reimbursement, as backup for accounting purposes. In no event shall Contractor Reimbursable Expenses exceed a total cost of \$3,000.00.

E. Application License

Contractor hereby grants the City a non-exclusive, irrevocable, royalty free license to use, the Club Prophet Systems application and any and all upgrades, updates, bug fixes, corrections and revisions which may occur during the term of the Agreement.

Configuration or customization of the application made according to the City's requirements will be performed by the Contractor. Ongoing maintenance of these configurations or customizations will be provided by the Contractor to maintain continued compatibility with the Club Prophet Systems application as upgrades, updates, bug fixes, corrections, or revisions occur to the application.

The Contractor will own in its entirety such configuration development and the intellectual property related to the Contractor's application; however the City shall have a non-exclusive, irrevocable, royalty free license to use such works from the date that such work is completed and released to the City.

The City shall own all rights, title, and interest to all City Data entered into the licensed application by any user who is or has been authorized and licensed to use the application. The Contractor shall own all rights, title, and interest in any Anonymous Data.

All archival and backup copies of the application are subject to the provisions of this Agreement, and all titles, patent numbers, trademarks, copyright and other restricted rights notices shall be reproduced on any such copies.

The Contractor must uphold the Agreement and all the terms therein which includes the Club Prophet Systems application and all deliverables as set forth in Paragraph 2 C. If the Contractor 1) breaches the Agreement; 2) ceases to do business; or 3) this Agreement is terminated by either party as defined in Paragraph 7, the Contractor shall provide the City with a 1 year license subscription that the City may or may not exercise.

A Club Prophet Systems One (1) Year License, Support, and Maintenance Subscription may be renewed annually as set forth in Paragraph 2 C. Users are defined as City employees or partners and vendors that work with the City. Each license includes full use of the contracted modules of the Club Prophet Systems application. Also included is all hosting, operation, maintenance and data back-up, unlimited support by phone, email, or web based.

- F. Restrictions on Application Use. The City shall not, directly or by permitting any third party to:
 - 1) Disassemble, reverse engineer, decompile, or otherwise attempt to derive source code from the licensed application;
 - 2) Modify, adapt, create derivative works based upon, or translate the licensed application or any portion thereof;
 - 3) Resell, distribute, or otherwise grant any rights in licensed application or any portion thereof to any third party, including commercial time-sharing, rental, or service bureau use, or use the licensed application for the benefit of any third party;
 - 4) Access the licensed application or any portion thereof other than in connection with the City's internal use; or
 - 5) Publish or participate with any third party in any performance or benchmark tests or analysis relating to the licensed application or any portion thereof. A portion of the licensed application may be comprised of Contractor Data Libraries. The City acknowledges and agrees

that the Contractor Data Libraries are original works of authorship created, developed and maintained by Contractor at great expense and that, in addition to being subject to the foregoing restrictions 1) through 5) and applicable copyright laws, are confidential information of the Contractor that may only be used by the City for its internal use in conjunction with the use of the application components of the licensed application on the terms set forth in this Agreement.

G. Support and Maintenance.

Telephone Support. The Contractor shall provide telephone and email support for the licensed application. Such support shall be available Monday through Friday from 8:00 a.m. – 7:00 p.m. excluding USA holidays. (ET). If outside the normal support hours, emergency support shall be available by following the Emergency Support Process to contact the Contractor's Help Desk and receive a response within one (1) hour. The City shall first attempt to resolve any problem relating to the licensed application by referring to the Contractor provided documentation. The City shall report to the Contractor any discrepancies between the licensed application and the documentation.

Emergency Support Process

- I. Call the Contractor's support number at 800-793-4333
- II. Press One (1)
- III. Leave a detailed message explaining the problem/issue and provide a call back number to receive the Contractors return call.
- 2) Exclusions. No support shall be available, and the Contractor shall not be liable, for:
 - Problems, errors, or Bugs resulting from configuration or faults in the City's computer or network operating systems or any third party software;
 - II. City owned hardware malfunctions, including cables, ports, printers, disk drives, etc.; or
 - III. Modifications made to the licensed application by a party other than the Contractor.
- 3) Maintenance. The Contractor shall provide training material updates for any changes occurring as a result of application enhancements, major or minor revision releases, or maintenance/bug fixes which directly or indirectly impact the licensed application and the City's configuration and use thereof.

The Contractor shall update application documentation as a result of application enhancements, major or minor revision releases which directly or indirectly impact the licensed application and the City's configuration and use thereof.

The Contractor shall provide training updates to the City's staff to acquaint them with new or changed functionality and capabilities resulting from application enhancements, major or minor revision releases, or maintenance/bug fixes which directly or indirectly impact the licensed application and the City's configuration and use thereof.

H. Progress/Status/Risk/Issue Meetings

Progress/Status/Risk/Issue meetings shall be scheduled as needed throughout the Project unless a different schedule is agreed to in advance by all parties. Attendance by the Contractor and the City is required unless otherwise indicated. These meetings shall include:

- Progress Updates
- Milestones Achieved
- Milestones Missed
- Future Milestones
- Dependencies
- Issues
- Risks
- Project Communications
- Actions Review
- I. <u>Schedule</u>. The due dates of the deliverable(s) or otherwise, as set forth in Paragraph 2 C, shall not be altered or waived by the City without prior written approval, through the Change Management process, as defined in Paragraph 13.

3. Compensation.

- A. <u>Compensation Schedule</u>. The City shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Paragraph 2 C.
- B. <u>Payment</u>. The City shall pay to the Contractor for services performed based upon deliverables, milestones, and budget, with such compensation not to exceed Twenty four thousand nine hundred dollars and no cents (\$24,900.00), shall be paid by the City to the Contractor. All services and deliverables set out in the Scope of Work shall be provided for this agreed sum. If additional services or deliverables are deemed necessary, in no event will the Contractor be paid for services or deliverables provided in excess of the total compensation amount without a separate Agreement or Statement of Work being provided and agreed upon by the City in writing prior to those services being provided.

Payment shall be made upon Acceptance of each Deliverable and upon the receipt and acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. Payment shall be tendered to the Contractor within thirty (30) days of the date of written Certification of Acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. The City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein. All Payment Invoices MUST BE received by the City no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date WILL NOT BE PAID.

4. Taxes.

Use and local sales tax on the purchase of software and services are the sole responsibility of the City unless Contractor has agreed to collect and pay use tax on behalf of the City. In any event City is responsible for any use tax.

Other than use tax, the payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs,

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including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

5. Acceptance.

- A. <u>Submission</u>. Upon completion of agreed upon Deliverables as set forth in Paragraph 2 C, Contractor shall submit a Payment Invoice with the Deliverable, or description of the Deliverable, to the City Project Manager. Each Payment Invoice shall be for the established Deliverable price as set forth in Paragraph 2 C.
- B. <u>Acceptance</u>. The City CIO in conjunction with the City Project Manager shall determine if the Deliverable provided meets specifications. No payment shall be made for any Deliverable until the individual Deliverable that is the subject of the Payment Invoice has been accepted, in writing, by the City CIO. In order to accept the Deliverable, the City CIO, in conjunction with the City Project Manager, will assess the Deliverable and determine, at a minimum, that the Deliverable:
 - 1) Complies with the Scope of Work as set forth Paragraph 2;
 - 2) Complies with the terms and conditions of the City's solicitation;
 - 3) Complies with the Deliverable requirements as set forth in Paragraph 2 C;
 - 4) Meets or exceeds the generally accepted industry standards and procedures for the Deliverable(s); and
 - 5) Complies with all the requirements of this Agreement.

If the Deliverable is deemed acceptable by the City CIO, in conjunction with the City Project Manager, the City CIO will notify the Contractor of acceptance, in writing, within fifteen (15) business days from the date the City Project Manager receives the Deliverable(s) and accompanying payment Invoice.

C. Rejection. Unless the City CIO gives notice of rejection within the fifteen (15) day business day acceptance period, the Deliverable will be deemed to have been accepted. If the Deliverable is deemed unacceptable, fifteen (15) days from the date the City Project Manager receives the Deliverable(s) and accompanying payment Invoice, the City Project Manager will send a consolidated set of comments indicating issues, unacceptable items, and/or requested revisions accompanying the rejection. Upon rejection and receipt of comments, the Contractor will have fifteen (15) business days to resubmit the Deliverable to the City Project Manager with all appropriate corrections or modifications made and/or addressed. The City CIO, in conjunction with the City Project Manager, will again determine whether the Deliverable(s) is acceptable and provide a written determination within fifteen (15) business days of receipt of the revised or amended Deliverable. If the Deliverable is once again deemed unacceptable and thus rejected, the Contractor will be required to provide a remediation plan that shall include a timeline for corrective action acceptable to the City CIO. The Contractor shall also be subject to all damages and remedies attributable to the late delivery of the Deliverable under the terms of this Agreement and available at law or equity. In the event that a Deliverable must be resubmitted more than twice for acceptance, the Contractor shall be deemed as in breach of this Agreement. The City may seek any and all damages and remedies available under the terms of this Agreement and available at law or equity. Additionally, the City may terminate this Agreement.

6. Term.

THIS AGREEMENT SHALL NEITHER BE EFFECTIVE NOR BINDING UNTIL APPROVED BY ALL PARTIES. This Agreement shall terminate on October 13, 2019, unless terminated pursuant to Paragraph 7. No Agreement term, including extensions and renewals, shall exceed five years.

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7. Termination.

This Agreement may be terminated as follows:

A. General. By either Party upon written notice to be delivered to the other Party not less than sixty (60) business days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City's sole liability upon such termination shall be to pay for acceptable work performed prior to the Contractor's receipt of the notice of termination, if the City is the terminating party, or the Contractor's sending of the notice of termination, if the Contractor is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either Party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crimes due to misuse of state funds or due to the Appropriations paragraph herein.

B. Right to Cure.

- 1) As to the Contractor, the Notice of Termination shall include a description of the nonconformance or nonperformance by the Contractor. The Notice of Termination may include a period of fifteen (15) calendar days from date of Notice of Termination, for the Contractor to respond to the City to address the nonconformance or nonperformance of the Agreement that includes a Correction Plan and a Schedule for implementation of the Correction Plan. If the proposed Correction Plan and Schedule is acceptable to the City, the City shall notify the Contractor and the Notice of Termination shall be on hold pending satisfactory completion of the correction plan. If the Correction Plan and schedule are not met, the City shall re-issue the Notice of Termination.
- 2) As to the City, the Notice of Termination shall include a description of the nonconformance or nonperformance by the City. The Notice of Termination may include a period of fifteen (15) calendar days from date of Notice of Termination, for the City to respond to the Contractor to address the nonconformance or nonperformance of the Agreement that includes a Correction Plan and a Schedule for implementation of the Correction Plan. If the proposed Correction Plan and Schedule is acceptable to the Contractor, the Contractor shall notify the City and the Notice of Termination shall be on hold pending satisfactory completion of the correction plan. If the Correction Plan and schedule are not met, the Contractor shall re-issue the Notice of Termination.
- C. <u>Appropriations.</u> By the City, if required by changes in city, state or federal law, or because of court order, or because of insufficient appropriations for the performance of this Agreement, the City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the City terminates this Agreement pursuant to this subsection, the City shall provide the Contractor written notice of such termination at least ninety (90) business days prior to the effective date of the termination.
- D. <u>Obligations and Waiver</u>. By termination pursuant to this Paragraph, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THIS PARAGRAPH IS NOT EXCLUSIVE AND DOES NOT CONSTITUTE A WAIVER OF ANY

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OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE CITY CAUSED BY THE CONTRACTOR'S DEFAULT OR BREACH OF THIS AGREEMENT.

8. Termination Management.

- A. <u>Contractor</u>. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the Contractor shall:
 - 1) Transfer, deliver, and/or make readily available to the City property in which the City has a financial interest and any and all data, Know How, Intellectual Property, inventions or property of the City.
 - 2) Incur no further financial obligations for materials, services, or facilities under the Agreement without prior written approval of the City;
 - 3) Terminate all purchase orders or procurements and any subcontractors and cease all work, except as the City may direct, for orderly completion and transition;
 - 4) Take such action as the City may direct, for the protection and preservation of all property and all records related to and required by this Agreement;
 - 5) Agree that the City is not liable for any costs arising out of termination and that the City is liable only for costs of Deliverables accepted prior to the termination of the Agreement;
 - 6) Cooperate fully in the closeout or transition of any activities to permit continuity in the administration of City programs;
 - 7) In the event that this Agreement is terminated due to the Contractor's course of performance, negligence or willful misconduct and that course of performance, negligence, or willful misconduct results in reductions in the City's receipt of program funds from any governmental entity, the Contractor shall remit to the City the full amount of the reduction up to but not to exceed the amount of contracted software under this agreement.
 - 8) In the event this Agreement is terminated due to the Contractor's default, the Contractor shall be paid for the work completed and accepted to the date of the termination. Any funds paid to the contractor in excess of that amount are to be refunded to the City. Any refunded and remaining contract funds shall be used to procure a new contractor/subcontractor to complete the work.
 - 9) In the event this Agreement is terminated for any reason, or upon its expiration, the Contractor shall assist and cooperate with the City in the orderly and timely transfer of all City owned data and documentation whether provided by the City or created by the Contractor under this Agreement in a readable and understandable format.
- B. <u>City</u>. In the event this Agreement is terminated for any reason, or upon expiration, and in addition to all other rights to property set forth in this Agreement, the City shall:
 - 1) Retain ownership of all City work products and documentation created pursuant to this Agreement; and
 - 2) Pay the Contractor all amounts due for services Accepted prior to the effective date of such termination or expiration.

9. Indemnification.

Contractor shall save and hold the City harmless against all suits, claims, damages and losses for injuries to persons or property or for liability arising from or caused by errors, omissions, negligent or

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intentional acts of the Contractor, its officers, agents, servants, or employees, occurring in the performance of its services under this Agreement.

City shall save and hold the Contractor harmless against all suits, claims, damages and losses for injuries to persons or property or for liability arising from or caused by errors, omissions, negligent or intentional acts of the City, its officers, agents, servants, or employees, occurring in the performance of its services under this Agreement.

10. Warranties.

- A. <u>General</u>. The Contractor hereby expressly warrants the Deliverables as being correct and compliant with the terms of this Agreement, Contractor's official published specification and technical specifications of this Agreement and all generally accepted industry standards. This warranty encompasses correction of defective Deliverables and revision of the same, as necessary, including deficiencies found during the implementation, or post-implementation phase.
- B. <u>Software</u>. The Contractor warrants that any software or other products, including the licensed application, delivered under this Agreement shall comply with the terms of this Agreement, Contractor's official published specification(s) and technical specifications of this Agreement and all generally accepted industry standards. The Contractor further warrants that the software or other products, including the licensed application, provided under this Agreement will meet the applicable specifications for two (2) years after Acceptance by the City CIO and implementation by the City. If the software or other products, including the licensed application, fails to meet the applicable specifications during the warranty period, the Contractor will correct the deficiencies, at no additional cost to the City, so that the software or other products, including the licensed application, meets the applicable specifications.

11. Contractor Personnel.

- A. <u>Key Personnel.</u> Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the City. Key personnel are those individuals considered by the City to be mandatory to the work to be performed under this Agreement. Key Contractor personnel shall be:
 - Nate Morris, Project Manager
- B. Personnel Changes. Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the City. For all personnel, the City reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) business days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to City approval. The City, in its sole discretion, may approve additional time beyond the ten (10) business days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the project. The Contractor shall also make interim arrangements to assure that the project progress is not affected by the loss of personnel. The City reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the City, meeting the City's expectations.

12. Status of Contractor.

- A. <u>Independent Contractor</u>. The Contractor and its agents and employees are independent contractors performing services for the City and are not employees of the City. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable for income tax purposes as self-employment or business income and are reportable for self-employment tax. The Contractor agrees not to purport to bind the City unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.
- B. <u>Subject of Proceedings.</u> Contractor warrants that neither the Contractor nor any officer, stockholder, director or employee of the Contractor, is presently subject to any litigation or administrative proceeding before any court or administrative body which would have an adverse effect on the Contractor's ability to perform under this Agreement; nor, to the best knowledge of the Contractor, is any such litigation or proceeding presently threatened against it or any of its officers, stockholders, directors or employees. If any such proceeding is initiated or threatened during the term of this Agreement, the Contractor shall immediately disclose such fact to the City.

13. Change Management.

- A. <u>Changes</u>. The Contractor and/or the City may request changes or revisions to the Scope of Work or Project Tasks as defined in Paragraph 2 in accordance with the "Change Request Process", Paragraph 13 B, described herein.
- B. <u>Change Request Process</u>. In the event that circumstances warrant a change to accomplish the Scope of Work or Project Tasks as defined in Paragraph 2, a Change Request shall be submitted that includes the following:

The name of the person requesting the change, a summary of the required change, the start date for the change, the reason and necessity for change, the urgency level for the change, the elements to be altered, the impact of the change, the staffing plan associated with the change, the impact on the schedule for implementing the change, the cost impact, the risk assessment and a recommended approach to the change.

C. Change Request Approval.

- 1) City. The City shall provide a written decision on the Change Request to the Contractor within a maximum of ten (10) business days of receipt of the Change Request.
- 2) Contractor. The Contractor shall provide a written decision on the Change Request to the City within a maximum of ten (10) business days of receipt of the Change Request.

The City CIO, upon a Change Request approval, shall formally amend the original Agreement. The Change Request shall then be bound by the Terms and Conditions of the original Agreement.

14. Default/Breach.

In the event this Agreement is terminated due to the Contractor's default, the Contractor shall be paid for the work completed and accepted to the date of the termination. Any funds paid to the contractor in excess of that amount are to be refunded to the City. Any refunded and remaining contract funds shall be used to procure a new contractor/subcontractor to complete the work.

15. Equitable Remedies.

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the City irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the City, and the Contractor consents to the City's obtaining from a Kansas court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. City's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that City may have under applicable law, including, but not limited to, monetary damages.

16. Liability.

Contractor shall be liable for damages arising out of injury to persons and/or damage to real or tangible or intangible personal property or liability loss exposures before or after Acceptance, delivery, installation and use of the equipment, either at the Contractor's site or the City's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor or defect of the equipment provided by contractor or installation of contractor provided equipment by contractor personnel. Contractor shall not be liable for damages arising out of, or caused by, alterations to the equipment (other than alterations performed or caused by Contractor's officers, employees or agents) made by the City or for losses occasioned by the City's fault or negligence. Nothing in this Agreement shall limit the Contractor's liability, if any, to third parties and employees of the City, or any remedy that may exist under law or equity in the event a defect in the manufacture of, or the negligent acts or omissions of the Contractor, its officers, employees, or agents, is the cause of injury to such person.

17. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

18. Subcontracting.

The Contractor shall not subcontract any portion of this Agreement without the prior written approval of the City. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the City.

19. Release.

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the City, its officers, employees and agents from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

20. Confidentiality.

Any confidential information provided to the Contractor by the City or, developed by the Contractor based on information provided by the City in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City. Upon termination of this Agreement, Contractor shall deliver all confidential material in its possession to the City within thirty (30) business days of such termination. Contractor acknowledges that failure to deliver such confidential information to the City will result in direct, special and incidental damages.

21. Conflict of Interest.

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

22. Records and Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the City or designated representative. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments.

23. Amendment.

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the Parties hereto. No amendment shall be effective or binding unless approved by all of the approval authorities.

24. Merger, Scope, Order of Precedence.

- A. <u>Severable</u>. The provisions of this Agreement are severable, and if for any reason, a clause, sentence or paragraph of this Agreement is determined to be invalid by a court or adjudicator or adjudicative body having jurisdiction over the subject matter hereof, such invalidity shall not affect other provisions of this Agreement, which can be given effect without the invalid provision.
- B. <u>Merger/Scope/Order</u>. This Agreement incorporates any and all agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants and understanding have been merged into this Agreement. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Agreement.

25. Non-Discrimination.

The Contractor shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements incorporated herein by reference.

26. Workers Compensation.

The Contractor agrees to comply with all federal, state, and city laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

27. Applicable Law and Venue.

This Agreement shall be subject to, governed by, and construed according to the laws of the City and the State of Kansas, and jurisdiction and venue of any suit in connection with this Agreement shall reside in the jurisdiction of the defending party.

28. Waiver.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed and



in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

29. Headings.

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

30. Survival.

The Articles entitled Intellectual Property, Intellectual Property Ownership, Confidentiality, and Warranties shall survive the expiration or termination of this Agreement. Software License and Software Escrow agreements and other unexpired agreements entered into in conjunction with this Agreement shall survive the expiration or termination of this Agreement.

31. Calculation of Time.

Any time period herein calculated by reference to "days" means calendar days; provided, however, that if the last day for a given act falls on a Saturday, Sunday, or a holiday as observed by the City, the day for such act shall be the first day following that is not a Saturday, Sunday, or such observed holiday.

32. Force Majeure.

Neither party shall be liable in damages or have any right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party who performance is affected.

33. Notices.

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by overnight carrier or upon telephone confirmation by Contractor to the sender of receipt of a facsimile communication or e-mail that is followed by a mailed hard copy from the sender. Notices shall be addressed as follows:

To the City: City of Wichita

455 N Main Wichita, KS 67202

Attention: Mr. Mike Mayta, CIO E-Mail: mmayta@wichita.gov

Fax: (316) 219-6227

To the Contractor: Club Prophet Systems, Inc.

701 Russellton Road Cheswick, PA 15024

Attention: Mr. Rick Robshaw, CEO E-Mail: Rick@ClubProphetSystems.com

Fax: (724) 274-0387

Any change to the Notice individual or the address, shall be effective only in writing.

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34. <u>.</u>	Authority.
1	If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract and that the Contractor agrees to be bound by the provisions thereof.
35. <u>l</u>	No Arbitration.
(The Contractor and the City shall not be obligated to resolve any claim or dispute related to the contract by arbitration. Any reference to arbitration in prior discussions or documents is deemed void.
	VITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the lired approval authorities below.
City	of Wichita
	Date:
Carl	Brewer, Mayor
Atte	st:
Kare	n Sublett, City Clerk
Appr	roved as to form:

Gary E. Rebenstorf, City Attorney

Club Prophet Systems, Inc.

Rick Robshaw, CEO

Date: 5-28-14

Exhibit A Club Prophet Systems Hardware Requirements

Club Prophet Systems Hardware Requirements POS Express v3 – 5/1/2014

Server: 1 – 5 users

Required	Recommended
Intel Core 2 Duo (or comparable AMD)	Intel Core i5-3470 3.2 GHz Quad
Microsoft Windows 7 Professional 64-	Core(or greater)
bit + Windows Updates	Microsoft Windows 7 Pro or 8.1 Pro
4 GB of Installed Memory	64-bit + Windows Updates
20 GB Available Hard Drive Space	8 GB of Installed Memory
MSSQL 2012 Express Edition	40 GB hard drive space with Separate
Removable Media for backups	Data and OS partitions
Antivirus software	MSSQL 2012 Express
	Off-site data backup
	Antivirus software

^{*}Celeron Based Processors do not meet specs

Server: 6 + users

Required	Recommended
* Intel Xeon E5-2420 Six Core 1.9 GHz (or	*Intel Xeon E5-2420 Six Core 1.9
greater)	GHz (or greater)Microsoft Windows
Microsoft Windows Server 2008R2 or 2012	Server 2008R2 or 2012 64-bit +
64-bit + Windows Updates	Windows Updates
8 GB of Installed Memory	16 GB of Installed Memory
40 GB Available Hard Drive Space	3- 1TB Drives in RAID 5
MSSQL 2005 Full Edition (Standard,	Configuration and Separate OS and
Workgroup or Enterprise)	Data partitions
Removable Media for backups (USB key,	MSSQL 2012 Full Edition
external drive, tape, etc.)	(Standard, Workgroup or
Antivirus software	Enterprise)
	Mirrored Raid Configuration or
	offsite backup
	Antivirus software

^{*}Celeron Based Processors do not meet specs

Exhibit A Club Prophet Systems Hardware Requirements

POS Client Machines and Web Server

Required	Recommended
*Intel Core 2 Duo	* Intel Core i3-3220 Dual Core 3.3
Microsoft Windows 7 (32 or 64 bit) ¹	GHz (or greater)
+ Windows Updates	Microsoft Windows 7 or 8.1 Pro 64-bit
2 GB of Installed Memory	+ Windows Updates
20 GB Available Hard Drive Space	4 GB of Installed Memory
Wired Network Connectivity	20 GB hard drive space
Antivirus software	Wired Network Connectivity
	Antivirus software

^{*}Celeron Based Processors do not meet specs

Peripheral Hardware:

- Thermal Receipt Printers supported: Citizen CTS2000 (USB Only), Epson TM Series (USB only)
- Impact Printers supported (for remote kitchen printing): Epson TM-U200 series (Ethernet only)
- Cash Drawers Supported: APG-320 Cash Drawer, MMF Cash Drawer
- Bar Code Scanners Supported: Symbol, PSC, Metrologic
- Bar Code Printer Supported: Zebra LP2844, 2824
- Touch Screen Monitors supported: minimum LCD size 15"
- Pole Displays: Logic Controls PD3000 (USB)
- Card Swipes: Hypercom L5300, Magtek

¹ 64 bit required for client that will handle credit cards for PA-DSS Compliance. 32 bit acceptable if not handling credit card data.

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: Amendment of Downtown Development Incentives Policy (Districts I and VI)

INITIATED BY: Planning Department

AGENDA: New Business

Recommendations: Approve the amendments to the Downtown Development Incentives Policy.

Background: On May 17, 2011, the City Council approved the Downtown Development Incentives Policy to establish the criteria by which the City of Wichita will consider incentives for downtown development projects. The policy subsequently was used to evaluate downtown development projects for Block One at Douglas and Broadway and the West Bank site along McLean between Douglas and 1st Street. The policy also has been used on numerous occasions to guide discussions of proposed projects with developers considering the use of incentives.

As with any policy, periodic review and amendment is needed to continually improve processes. To that end, Mayor Brewer appointed a committee of business representatives and City staff to review the policy and recommend improvements, particularly related to the procedures for disposing of City-owned real property. The committee's recommendations are contained in the attached report entitled "Real Estate Disposition: Request for Proposal (RFP) Advisory Committee Final Report." The procedures recommended in this report would be implemented through a City Manager approved Administrative Regulation if the City Council approves the recommended amendments to the Downtown Development Incentives Policy.

The new procedures for real estate disposition would establish three approaches as follows:

- 1. <u>Surplus Real Estate</u> Properties that are typically remnants of property acquired for capital projects and that do not have significant development potential and are not usable by the City would be declared surplus property by the City Council and advertised for sale on the City's website.
- 2. Streamlined Request for Proposal Properties that are currently used by the City but located within an area that has an adopted plan indicating a long-term "higher and better" use for the property would not be actively marketed. However, the City would respond to an unsolicited credible interest or offer to acquire the property by issuing a streamlined request for proposals (RFP) with staff-developed evaluation criteria aimed at determining consistency with the adopted plan for the area in which the property is located. Such real estate dispositions would only involve limited base-level incentives that are not subject to the Downtown Development Incentives Policy and would be subject to conditions aimed at ensuring consistency with the adopted area plan. In a situation where the developer proposing to acquire the property is in a unique position or competitive advantage by owning adjacent property, the City may forego the RFP process, if the proposal is consistent with the adopted plan.
- 3. Request for Proposal For properties that were determined to be strategic in its offering, the City will proactively solicit offers through an RFP process. The issuance of an RFP will be market-driven and based on the best strategy for maximizing community benefit and financial return. An

Amendment of Downtown Development Incentives Policy (Districts I and VI) June 10, 2014 Page 2 of 2

RFP will only be issued after the City Council has approved the criteria on which proposals will be evaluated. Projects will be eligible for incentives covered by the Downtown Development Incentives Policy and proposals will be reviewed according to the policy's requirements.

<u>Analysis:</u> One of the committee recommendations contained in the report is to change the structure of the evaluation team that reviews development proposals so that it is comprised primarily of private-sector representatives as voting members, with City staff membership being primarily non-voting staff support. Since the membership of the evaluation team is established by the Downtown Development Incentives Policy, amendment of the policy is needed to make the recommended change.

Additionally, staff has noted several areas of potential improvement through implementation of the policy. The following recommended amendments to the Downtown Development Incentives Policy address these areas.

- Numerous discussions with developers regarding proposed projects have involved requests for public projects to improve existing City infrastructure such as parking facilities and streets. While these public improvements are critical to the success of the proposed development project, the improvements are not directly tied to the development and benefit the general public as much or more as the development. Such projects are typically funded through the Capital Improvement Program or through Special Assessments. The Downtown Development Incentives Policy is recommended to be amended to exempt public projects that are funded through the Capital Improvement Program or Special Assessments from the policy, even if a project is partially funded through one or more of the incentives covered by the policy.
- The Center for Economic Development and Business Research (CEDBR) Fiscal Impact Model measures the extent to which development projects receiving incentives generate public revenue. The Downtown Development Incentives Policy indicates that projects are evaluated on the extent to which at least 1.3 dollars of future public revenue is generated for each dollar of incentives. However, downtown projects, particularly those that are primarily residential in nature, often do not generate sufficient economic output in the form of newly created jobs to result in this level of future public revenue. Therefore, it is recommended that the Downtown Development Incentives Evaluation Form be modified to reallocate some of the points from the CEDBR evaluation to other evaluations of the public benefits of the project, as shown in the attached document.
- The Downtown Development Incentives Policy now requires parties involved in development projects to be evaluated according to their Dun and Bradstreet Financial Stress Score. However, many real estate development entities do not have a Dun and Bradstreet Financial Stress Score, and even for those entities that have a score, the lowest rating only indicates a less than five percent chance of financial default by the entity in the coming year. Since the measure does not add value to the evaluation process and is expensive to use, it is recommended that the Dun and Bradstreet Financial Stress Score be removed from the policy's evaluation criteria.

The recommended amendments to the Downtown Development Incentives Policy are contained in the attached redlined document. The resulting policy if approved by the City Council is contained in the attached Downtown Development Incentives Policy Resolution.

<u>Financial Considerations:</u> The City of Wichita receives an \$8,500 application fee per project covered by the Downtown Development Incentives Policy to offset direct and administrative costs. The committee's recommendations have the potential to generate revenue from the disposition of City-owned real estate.

<u>Legal Considerations:</u> The resolution amending the Downtown Development Incentives Policy has been reviewed and approved as to form by the Law Department.

<u>Recommendations/Actions:</u> It is recommended that the City Council adopt the resolution amending the Downtown Development Incentives Policy and authorize the necessary signatures.

Amendment of Downtown Development Incentives Policy (Districts I and VI) June 10, 2014 Page 2 of 2

Attachments:
Real Estate Disposition: Request for Proposal (RFP) Advisory Committee Final Report Downtown Development Incentives Policy – Recommended Revisions (Redlined) Downtown Development Incentives Policy Resolution Downtown Development Incentives Evaluation Form

RESOLUTION NO. 14-160

A RESOLUTION AMENDING THE CRITERIA BY WHICH THE CITY OF WICHITA WILL CONSIDER INCENTIVES FOR DOWNTOWN DEVELOPMENT PROJECTS.

WHEREAS, Project Downtown: The Master Plan for Wichita was adopted by the City Council on December 14, 2010; and

WHEREAS, the Downtown Development Incentives Policy was adopted by the City Council on May 17, 2011; and

WHEREAS, the Downtown Development Incentives Policy establishes a program for public-private partnerships involving incentives that fund investments in infrastructure that is timed with and supportive of private investment, creates lasting public benefits, and facilitates additional private investment; and

WHEREAS, the criteria of the Downtown Development Incentives Policy need to be amended to improve processes.

NOW, THEREFORE BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. The City Council hereby establishes the amended Downtown Development Incentives Policy as follows, which supersedes the policy approved May 17, 2011:

A. BACKGROUND AND PURPOSE. Project Downtown: the Master Plan for Wichita was adopted by the City Council on December 14, 2010, as the official policy guide for the revitalization of downtown Wichita. Project Downtown identifies that development in downtown often poses initial development costs that can be hard to address with solely with mechanisms like special assessment districts; facade improvements grants and financing; economic development incentive and industrial revenue bond based tax abatements; community improvement district financing; or lead and asbestos abatement financing that provide development incentives in other areas of Wichita. Therefore, Project Downtown recommends that the City of Wichita help overcome such obstacles to private investment by establishing a Downtown Incentives Policy that provides for a range of additional incentives in the form of public investments in downtown development projects that are timed with and supportive of private investment if a facet of the development involves creation of public assets that have lasting public benefits and facilitate additional private investment, and if the proposed public investment is investment in public assets such as parking, streetscaping, parks or other facilities with public benefit beyond the individual project. The purpose of the Downtown Development Incentives Policy is to outline the criteria by which the City of Wichita will consider such additional incentives for downtown development projects. Downtown

development projects are those projects located within the Project Downtown plan area.

- **B. APPLICABLE INCENTIVES.** The Downtown Development Incentives Policy applies to requests for the following general public sources of funding (hereafter, "Downtown Development Incentives") to be used in a downtown development project that involves creation of, and investment in, public assets with a lasting public benefit and facilitation of additional private investment:
 - Tax Increment Financing (TIF)
 - Hotel Guest Tax
 - Forgivable Loans
 - STAR Bonds
 - Land
 - Cash

The City's other established incentive programs will remain available for downtown development projects but will not be subject to the requirements of this policy. Additionally, public projects to improve City assets that are funded through the City's Capital Improvement Program or that are funded, at least partially, through Special Assessments will not be subject to the requirements of this policy, even if the project is partially funded through one or more of the incentives listed above.

C. PRELIMINARY REVIEW PROCESS. Prior to consideration by the City Council, parties intending to request Downtown Development Incentives must contact the Downtown Design and Innovation Center (DDIC) prior to submitting their request. The DDIC is a consultative undertaking between the Wichita Downtown Development Corporation and the City of Wichita responsible for assisting with the preparation of requests for Downtown Development Incentives. Parties requesting Downtown Development Incentives are required to participate in the preliminary review process established by the DDIC prior to submitting their request.

Once the developer has completed detailed design of the project, the project will be scheduled for design review by the DDIC. The developer will need to provide a site plan and perspective drawings in advance of the design review meeting. Developers and their design team will attend the design review meeting to present the project and answer questions from DDIC team. A dialogue regarding any design modifications needed for consistency with the design guidelines will occur, and the DDIC team will attempt to reach consensus regarding any design modifications with the developer. A written report outlining design modifications needed for consistency with the design guidelines will be provided to the developer following the design review meeting. The developer will provide a revised site plan and perspective drawings to the DDIC for confirmation of the design modifications. If the design modifications are unacceptable to the developer, an appeal to the City Manager may be filed. The City Manager will appoint a committee to hear and decide the appeal. In the event the

developer and committee are unable to reach agreement on the modifications, the developer may withdraw the proposal.

D. SUBMITTAL REQUIREMENTS. After completing the preliminary review process requirements, parties requesting Downtown Development Incentives must submit the information listed below. The City Manager, or other City Staff designated by the City Manager, will determine if the information provided is sufficient to undertake the evaluation process. If the City Manager, or other City Staff designated by the City Manager, determines that additional information is needed in order to undertake the evaluation process, parties requesting Downtown Development Incentives must submit such additional information as may be required by the City Manager, or other City Staff designated by the City Manager.

Project Summary

- 1. Project amount and purpose
- 2. Description of the redevelopment project, including details of how the proposed project meets the "Threshold Criteria" and the "Public Benefit Criteria" described in the "Evaluation Process" section below
- 3. Description of the proposed public-private partnership, including details of how the project partnership meets the "Threshold Criteria" and the "Business Plan Criteria" described below
- 4. Description of the development team, including details of how the development team meets the "Threshold Criteria" and the "Developer Background" criteria described below

Design Plan

- 1. Site Plan
- 2. Perspective Drawings

Business Plan

- 1. Market Analysis, including written description of plan to meet projections
- 2. Pro Forma, including written description of plan to meet projections
- 3. CEDBR Fiscal Impact Model (the developer is responsible for CEDBR's fee for this service)
- 4. Source of capital, including:
 - a. Evidence of developer equity
 - b. Evidence of lender commitment
- 5. Amount and purpose of public investment sought
- 6. Repayment plan, if the City ordinarily requires a repayment plan or contingent repayment plan in connection with the type of incentive at issue
- 7. Backup repayment plan, including guarantors, if a repayment plan is required

Developer Background

- 1. Projected or existing financial statements (three years) for:
 - a. Developer, development entity, and key project partners, as applicable
 - b. Guarantors (if different)

- c. If desired, financial statements may be submitted separately to a designated third party for analysis and summary report to the City.
- 2. History/ownership/legal structure of the business, including:
 - a. Certificate of Good Standing from the Secretary of State
 - b. Tax Clearance Certificate from the Department of Revenue
- 3. Experience of the development team, including:
 - a. Experience with similar projects
 - b. Number of projects completed by the development team
 - c. Past project experience with the City of Wichita
 - d. References, especially from other municipalities that have worked with the development team
- 4. Banking references, including:
 - a. Credit history reports, including past credit defaults (not required if the third party financial analysis option is selected)
 - b. Letters of good standing from previous lenders
- 5. Applicant Disclosure Questionnaire for:
 - a. Developer, development entity, and key project partners, as applicable
 - b. Guarantors (if different)

Parties that do not want their financial statements disclosed publicly may submit their financial statements directly to a third party financial analysis consultant selected by the City. The third party financial analysis consultant will keep the financial statements confidential and will provide a summary report of their analysis of the financial statements to the City of Wichita, which analysis will in all cases address whether the financial statements were audited, whether the statements were accompanied by an auditor's opinion that they fairly presented the financial condition of the submitting party or parties, and whether any of the statements contained an auditor's note concerning material or fundamental uncertainty or actual doubt as to the subject's ability to continue as a going concern.

- **E. EVALUATION PROCESS.** In considering a request for Downtown Development Incentives for a downtown development project, criteria will be evaluated regarding the public benefit of the project, the business plan for the project, and the developer's background and qualifications. An evaluation matrix (attached) will be used to evaluate projects on each criteria category. The evaluation matrix will be completed by an evaluation team that will collectively determine a single project score through team consensus. The evaluation team will be appointed by the City Manager and will include a diverse membership with representatives from the following:
 - Downtown Revitalization Manager, Chairperson
 - Urban Development Director
 - Two private sector business representatives
 - One lender
 - Two Wichita Downtown Development Corporation staff/members
 - Other subject matter experts as warranted by the project
 - Management Analyst (non-voting), staff support

- Public Works/Engineering design representative (non-voting), staff support
- Finance Department representative (non-voting), staff support
- Law Department representative (non-voting), staff support

A project will need to receive 70% of the available points in each of the three criteria categories in order to be considered for Downtown Development Incentives. If the evaluation determines that Downtown Development Incentives should be considered, the resulting rating from the evaluation matrix will determine the required form of the guarantee for public revenue shortfall and the debt service coverage ratio for public financing. Higher rated projects will receive the more favorable terms. If requested, parties requesting Downtown Development Incentives may modify their proposal after the initial evaluation in order to improve the terms through a subsequent evaluation. Final approval of Downtown Development Incentives will be by the City Council.

The minimum threshold and categorical criteria upon which a request for Downtown Development Incentives will be evaluated are:

Minimum Threshold Criteria for the Developer

- 1. 10% equity
- 2. Guarantee for a proportional share of public revenue shortfall. For projects that involve multiple phases or developers, each phase or developer must provide a guarantee for a percentage of the public revenue shortfall proportional to that phase's or developer's portion of the overall project.
- 3. Letter of interest from primary lender or equity investor
- 4. Applicant Disclosure Questionnaire

Minimum Threshold Criteria for the Project

- 1. Consistency with Project Downtown's General Design Guidelines and Project Development Criteria. A Design Review Process has been established to determine a project's eligibility for this criterion.
- 2. Economic analysis confirms that the project is infeasible "but for" public investment.
- 3. Public investment is in a public asset as defined in Project Downtown.
- 4. Minimum private to public capital investment ratio of 2 to 1. For projects that involve multiple phases of private capital investment but up-front public capital investment that benefits all phases of development, the amount of private investment for a phase of development must be at least twice the proportion of public capital investment that directly benefits that phase of development.
- 5. Minimum public debt service coverage ratio of 1.2 to 1

Public Benefit/Compatibility with Overall Downtown Plan

1. Project Location/Design – Projects will be evaluated on the extent to which the project exceeds the General Design Guidelines and Project Development Criteria in the following four areas:

- a. Location Project Downtown identifies priority locations such as Catalyst Sites and Walkable Development Focus Areas. Projects will be evaluated on the extent to which they utilize these priority locations in a manner that fosters additional development on properties surrounding the project site. Projects also will be evaluated on the ability to connect existing downtown districts and nodes and on impacts to the transportation system, such as providing a strategic walking connection to the river or accommodating a key transit stop.
- b. Design –The design of projects will be evaluated on the extent to which they exceed the minimum thresholds. Project Downtown encourages extraordinary design that contributes to Wichita's identity as a community of distinction. Additionally, the Project Development Criteria identifies encouraged design features for each downtown district as "optional criteria." Projects will be evaluated on the extent to which they contribute to community identity and include encouraged design features.
- c. Land Use/Project Type –The Project Development Criteria identifies encouraged land uses for each downtown district as "optional criteria." Projects will be evaluated on the extent to which they include these encouraged land uses. Projects also will be evaluated on the extent to which they provide a new attraction, destination business, or major employer to the community.
- d. Other Developers are encouraged to propose projects that further other priorities identified in Project Downtown. Projects will be evaluated on the extent to which they accomplish additional Project Downtown priorities.
- 2. Return on Public Investment The extent to which a project's return on public investment exceeds 1.3 to 1 on the Center for Economic Development and Business Research (CEDBR) Fiscal Impact Model will be evaluated.
- 3. Public Purpose Projects will be evaluated on the extent to which they accomplish the following public purposes:
 - a. Public asset serves developments beyond the project site
 - b. Project helps accomplish Project Downtown vision and strategies
 - c. Project enhances the community's economic base
 - d. Project promotes sustainability
 - e. Other public benefits identified by the developer

Proposed Project Characteristics

- 1. Market Analysis The project's market analysis will be evaluated on the following criteria:
 - a. Extent that the current Project Downtown market analyses confirms project feasibility, or
 - b. Alternatively, confirmation of project feasibility by a separate third-party market analysis
- 2. Pro Forma The project pro forma will be evaluated on the following criteria:
 - a. Rate of private investment return
 - b. Rents/prices consistent with performance of comparables
 - c. Projected rate of absorption consistent with performance of comparables
 - d. Long-term project solvency

- 3. Developer Equity The amount and form of developer equity in the project will be evaluated.
- 4. Share of Public Funding The extent to which private funding of the project exceeds the minimum threshold will be evaluated.
- 5. Lender Commitment The financial stability of the lender and the form of lender commitment will be evaluated.

Current Experience and Creditworthiness of Developer

- 1. Financial Statements The financial statements of the developer, development entity, key project partners, and guarantors will be evaluated on criteria such as the following:
 - a. Cash ratio of liquid assets to current liabilities
 - b. Debt/equity ratio
 - c. Debt service coverage ratio
 - d. Profit margin
 - e. Return on investment
 - f. Auditor's opinion on fairness of presentation
 - g. Auditor's opinion on appropriateness of going concern assumption
- 2. Developer Experience and Qualifications The developer's qualifications and experience will be evaluated on the following criteria:
 - a. Developer credit history
 - b. Letters of good standing from previous lenders
 - c. Certificate of Good Standing from the Secretary of State and Tax Clearance Certificate from the Department of Revenue
 - d. Previous credit defaults by developer or key partners
 - e. Experience with similar projects
 - f. Number of projects completed by the development team
 - g. Past project experience with the City of Wichita
 - h. References, especially from other municipalities that have worked with the development team
- F. DEVELOPMENT AGREEMENT REQUIRED. Concurrently with, or prior to, the approval of Downtown Development Incentives by the City Council, the City and the developer shall enter into a Development Agreement governing the conduct of the respective parties in relation to the proposed downtown development project. The Development Agreement will include a site plan and elevation drawings or renderings of the project, and a Sources and Uses of Funds table that identifies the various sources of public and private project funds and how they will be used. Among all other provisions, the Development Agreement will set forth the method and manner for disbursement of funds by the respective parties to pay for eligible project costs as well the responsibilities and milestones of the respective parties in project completion. The assignment of Development Agreement rights to any third party assignee will require prior written consent of the City, which may be granted or withheld at the sole discretion of the City.

- G. "GAP" FINANCING REQUIREMENT. Approval of Downtown Development Incentives will require a financial analysis demonstrating that the project would not otherwise be possible without the use of the requested development incentive ("gap" analysis). Parties requesting Downtown Development Incentives will be required to provide the City pro forma cash flow analyses and sources and uses of funds in sufficient detail to demonstrate that reasonably available conventional debt and equity financing sources are not available to fund the entire cost of the project and still provide the developer a reasonable market rate of return on investment. The reasonableness of the rate of return on investment will be determined by dividing net operating income by development cost and comparing that rate to the overall capitalization rate for the land use(s) proposed. Parties requesting Downtown Development Incentives shall use current market conditions and input from local appraisers and lenders in determining the capitalization rate.
- **H. BACKGROUND CHECK.** The City will conduct a background check on all parties requesting Downtown Development Incentives as well as all project partners. Parties requesting Downtown Development Incentives are required to furnish the City the personal and business information needed to carry out such a background check.
- I. CITY ADMINISTRATIVE FEES. The City shall be paid a non-refundable application fee of \$8,500 with the formal submittal of a request for Downtown Development Incentives. Parties requesting Downtown Development Incentives are responsible for paying the fee charged by the third party financial analysis consultant for preparing a summary report of the applicant's financial statements. The third party financial analysis consultant will be selected by the City through a competitive request for proposals process and will be "on call" to evaluate financial statements as applications are received. The fee charged by the third party financial analysis consultant will vary based on the complexity of the project with more complex projects requiring higher fees. Parties requesting Downtown Development Incentives are responsible for paying the fee charged by the Center for Economic Development and Business Research (CEDBR) to run the Fiscal Impact Model for the project.
- J. DESIGN GUIDELINES. All projects must be consistent with Project Downtown's General Design Guidelines and Project Development Criteria in order for it to be eligible for Downtown Development Incentives. Consistency of project design with the Project Downtown guidelines will be determined by the Downtown Design Resource Center (DDRC). Parties requesting Downtown Development Incentives must participate in the design review process established by the DDRC prior to submitting their request.

All property improvements commenced under a project supported by Downtown Development Incentives shall be subject to City regulations, standards, and policies, including, but not limited to: zoning and subdivision regulations, building codes, the City code, and any applicable design guidelines currently in place or hereafter approved. In addition, project plans and renderings shall be reviewed by the City's

Design Council and any suggestions provided by that body will be incorporated into the design of the project unless expressly overruled by the City Manager.

- **K. ANNUAL REPORTING.** Developers shall provide an annual report to the City no later than 30 days following the anniversary date of the Development Agreement. The annual report shall provide an account of all sources and uses of funds to pay private costs of the project. The City reserves the right to audit the account at its discretion and expense. The annual report also shall detail the developer's progress towards completing all responsibilities and milestones of project completion identified in the Development Agreement.
- **L. WAIVER OF POLICY.** Should the City Council determine the terms of this policy inappropriate to evaluate a particular request for Downtown Development Incentives, it may, by majority vote, waive or modify the binding effect of this policy in regard to that project.

SECTION 2. The City Council directs the staff of the City of Wichita to use the established criteria in developing recommendations for future City Council action regarding incentives for downtown development projects.

ADOPTED by the governing body of the City of Wichita, Kansas, this 10th day of June, 2014.

	CITY OF WICHITA, KANSAS				
	Carl Brewer, Mayor				
ATTEST:					
Karen Sublett, City Clerk (SEAL)					
Approved as to Form:					
Gary E. Rebenstorf, Director of Law					

CITY OF WICHITA DOWNTOWN DEVELOPMENT INCENTIVES POLICY

BACKGROUND AND PURPOSE

Project Downtown: the Master Plan for Wichita was adopted by the City Council on December 14, 2010, as the official policy guide for the revitalization of downtown Wichita. Project Downtown identifies that development in downtown often poses initial development costs that can be hard to address with solely with mechanisms like special assessment districts; façade improvements grants and financing; economic development incentive and industrial revenue bond based tax abatements; community improvement district financing; or lead and asbestos abatement financing that provide development incentives in other areas of Wichita. Therefore, Project Downtown recommends that the City of Wichita help overcome such obstacles to private investment by establishing a Downtown Incentives Policy that provides for a range of additional incentives in the form of public investments in downtown development projects that are timed with and supportive of private investment if a facet of the development involves creation of public assets that have lasting public benefits and facilitate additional private investment, and if the proposed public investment is investment in public assets such as parking, streetscaping, parks or other facilities with public benefit beyond the individual project. The purpose of the Downtown Development Incentives Policy is to outline the criteria by which the City of Wichita will consider such additional incentives for downtown development projects. Downtown development projects are those projects located within the Project Downtown plan area.

APPLICABLE INCENTIVES

The Downtown Development Incentives Policy applies to requests for the following general public sources of funding (hereafter, "Downtown Development Incentives") to be used in a downtown development project that involves creation of, and investment in, public assets with a lasting public benefit and facilitation of additional private investment:

- Tax Increment Financing (TIF)
- Hotel Guest Tax
- Forgivable Loans
- STAR Bonds
- Land
- Cash

The City's other established incentive programs will remain available for downtown development projects but will not be subject to the requirements of this policy. Additionally, public projects to improve City assets that are funded through the City's Capital Improvement Program or that are funded, at least partially, through Special Assessments will not be subject to the requirements of this policy, even if the project is partially funded through one or more of the incentives listed above.

PRELIMINARY REVIEW PROCESS

Prior to consideration by the City Council, parties intending to request Downtown Development Incentives must contact the Downtown Design and Innovation Center (DDIC) prior to submitting their request. The DDRC is a consultative undertaking between the Wichita Downtown Development Corporation and the City of Wichita responsible for assisting with the preparation of requests for Downtown Development Incentives. Parties requesting Downtown Development Incentives are required to participate in the preliminary review process established by the DDIC prior to submitting their request.

Once the developer has completed detailed design of the project, the project will be scheduled for design review by the DDIC. The developer will need to provide a site plan and perspective drawings in advance of the design review meeting. Developers and their design team will attend the design review meeting to present the project and answer questions from DDIC team. A dialogue regarding any design modifications needed for consistency with the design guidelines will occur, and the DDIC team will attempt to reach consensus regarding any design modifications with the developer. A written report outlining design modifications needed for consistency with the design guidelines will be provided to the developer following the design review meeting. The developer will provide a revised site plan and perspective drawings to the DDIC for confirmation of the design modifications. If the design modifications are unacceptable to the developer, an appeal to the City Manager may be filed. The City Manager will appoint a committee to hear and decide the appeal. In the event the developer and committee are unable to reach agreement on the modifications, the developer may withdraw the proposal.

SUBMITTAL REQUIREMENTS

After completing the preliminary review process requirements, parties requesting Downtown Development Incentives must submit the information listed below. The City Manager, or other City Staff designated by the City Manager, will determine if the information provided is sufficient to undertake the evaluation process. If the City Manager, or other City Staff designated by the City Manager, determines that additional information is needed in order to undertake the evaluation process, parties requesting Downtown Development Incentives must submit such additional information as may be required by the City Manager, or other City Staff designated by the City Manager.

Project Summary

- 1. Project amount and purpose
- 2. Description of the redevelopment project, including details of how the proposed project meets the "Threshold Criteria" and the "Public Benefit Criteria" described in the "Evaluation Process" section below
- 3. Description of the proposed public-private partnership, including details of how the project partnership meets the "Threshold Criteria" and the "Business Plan Criteria" described below
- 4. Description of the development team, including details of how the development team meets the "Threshold Criteria" and the "Developer Background" criteria described below

Design Plan

- 1. Site Plan
- 2. Perspective Drawings

Business Plan

- 1. Market Analysis, including written description of plan to meet projections
- 2. Pro Forma, including written description of plan to meet projections
- 3. CEDBR Fiscal Impact Model (the developer is responsible for CEDBR's fee for this service)
- 4. Source of capital, including:
 - a. Evidence of developer equity
 - b. Evidence of lender commitment
- 5. Amount and purpose of public investment sought
- 6. Repayment plan, if the City ordinarily requires a repayment plan or contingent repayment plan in connection with the type of incentive at issue
- 7. Backup repayment plan, including guarantors, if a repayment plan is required

Developer Background

- 1. Projected or existing financial statements (three years) for:
 - a. Developer, development entity, and key project partners, as applicable
 - b. Guarantors (if different)
 - c. If desired, financial statements may be submitted separately to a designated third party for analysis and summary report to the City.
- 2. History/ownership/legal structure of the business, including:
 - a. Certificate of Good Standing from the Secretary of State
 - b. Tax Clearance Certificate from the Department of Revenue
- 3. Experience of the development team, including:
 - a. Experience with similar projects
 - b. Number of projects completed by the development team
 - c. Past project experience with the City of Wichita
 - d. References, especially from other municipalities that have worked with the development team
- 4. Banking references, including:
 - a. Credit history reports, including past credit defaults (not required if the third party financial analysis option is selected)
 - b. Letters of good standing from previous lenders
- 5. Applicant Disclosure Questionnaire for:
 - a. Developer, development entity, and key project partners, as applicable
 - b. Guarantors (if different)

Parties that do not want their financial statements disclosed publicly may submit their financial statements directly to a third party financial analysis consultant selected by the City. The third party financial analysis consultant will keep the financial statements confidential and will provide a summary report of their analysis of the financial statements to the City of Wichita, which analysis will in all cases address whether the financial statements were audited, whether the statements were accompanied by an auditor's opinion that they fairly presented the financial condition of the submitting party or parties, and whether any of the statements contained an

auditor's note concerning material or fundamental uncertainty or actual doubt as to the subject's ability to continue as a going concern.

EVALUATION PROCESS

In considering a request for Downtown Development Incentives for a downtown development project, criteria will be evaluated regarding the public benefit of the project, the business plan for the project, and the developer's background and qualifications. An evaluation matrix (attached) will be used to evaluate projects on each criteria category. The evaluation matrix will be completed by an evaluation team that will collectively determine a single project score through team consensus. The evaluation team will be appointed by the City Manager and will include a diverse membership with representatives from the following:

- Downtown Revitalization Manager, Chairperson
- Urban Development Director
- •
- Two private sector business representatives
- One lender
- Two Wichita Downtown Development Corporation staff/members
- Other subject matter experts as warranted by the project
- Management Analyst (non-voting), staff support
- Public Works/Engineering design representative (non-voting), staff support
- Finance Department representative (non-voting), staff support
- Law Department representative (non-voting), staff support

A project will need to receive 70% of the available points in each of the three criteria categories in order to be considered for Downtown Development Incentives. If the evaluation determines that Downtown Development Incentives should be considered, the resulting rating from the evaluation matrix will determine the required form of the guarantee for public revenue shortfall and the debt service coverage ratio for public financing. Higher rated projects will receive the more favorable terms. If requested, parties requesting Downtown Development Incentives may modify their proposal after the initial evaluation in order to improve the terms through a subsequent evaluation. Final approval of Downtown Development Incentives will be by the City Council.

The minimum threshold and categorical criteria upon which a request for Downtown Development Incentives will be evaluated are:

Minimum Threshold Criteria for the Developer

- 1. 10% equity
- 2. Guarantee for a proportional share of public revenue shortfall. For projects that involve multiple phases or developers, each phase or developer must provide a guarantee for a percentage of the public revenue shortfall proportional to that phase's or developer's portion of the overall project.
- 3. Letter of interest from primary lender or equity investor
- 4. Applicant Disclosure Questionnaire

Minimum Threshold Criteria for the Project

- 1. Consistency with Project Downtown's General Design Guidelines and Project Development Criteria. A Design Review Process has been established to determine a project's eligibility for this criterion.
- 2. Economic analysis confirms that the project is infeasible "but for" public investment.
- 3. Public investment is in a public asset as defined in Project Downtown.
- 4. Minimum private to public capital investment ratio of 2 to 1. For projects that involve multiple phases of private capital investment but up-front public capital investment that benefits all phases of development, the amount of private investment for a phase of development must be at least twice the proportion of public capital investment that directly benefits that phase of development.
- 5. Minimum public debt service coverage ratio of 1.2 to 1

Public Benefit/Compatibility with Overall Downtown Plan

- 1. Project Location/Design Projects will be evaluated on the extent to which the project exceeds the General Design Guidelines and Project Development Criteria in the following four areas:
 - a. Location Project Downtown identifies priority locations such as Catalyst Sites and Walkable Development Focus Areas. Projects will be evaluated on the extent to which they utilize these priority locations in a manner that fosters additional development on properties surrounding the project site. Projects also will be evaluated on the ability to connect existing downtown districts and nodes and on impacts to the transportation system, such as providing a strategic walking connection to the river or accommodating a key transit stop.
 - b. Design –The design of projects will be evaluated on the extent to which they exceed the minimum thresholds. Project Downtown encourages extraordinary design that contributes to Wichita's identity as a community of distinction. Additionally, the Project Development Criteria identifies encouraged design features for each downtown district as "optional criteria." Projects will be evaluated on the extent to which they contribute to community identity and include encouraged design features.
 - c. Land Use/Project Type –The Project Development Criteria identifies encouraged land uses for each downtown district as "optional criteria." Projects will be evaluated on the extent to which they include these encouraged land uses. Projects also will be evaluated on the extent to which they provide a new attraction, destination business, or major employer to the community.
 - d. Other Developers are encouraged to propose projects that further other priorities identified in Project Downtown. Projects will be evaluated on the extent to which they accomplish additional Project Downtown priorities.
- 2. Return on Public Investment The extent to which a project's return on public investment exceeds 1.3 to 1 on the Center for Economic Development and Business Research (CEDBR) Fiscal Impact Model will be evaluated.
- 3. Public Purpose Projects will be evaluated on the extent to which they accomplish the following public purposes:
 - a. Public asset serves developments beyond the project site
 - b. Project helps accomplish Project Downtown vision and strategies

- c. Project enhances the community's economic base
- d. Project promotes sustainability
- e. Other public benefits identified by the developer

Proposed Project Characteristics

- 1. Market Analysis The project's market analysis will be evaluated on the following criteria:
 - a. Extent that the current Project Downtown market analyses confirms project feasibility, or
 - b. Alternatively, confirmation of project feasibility by a separate third-party market analysis
- 2. Pro Forma The project pro forma will be evaluated on the following criteria:
 - a. Rate of private investment return
 - b. Rents/prices consistent with performance of comparables
 - c. Projected rate of absorption consistent with performance of comparables
 - d. Long-term project solvency
- 3. Developer Equity The amount and form of developer equity in the project will be evaluated.
- 4. Share of Public Funding The extent to which private funding of the project exceeds the minimum threshold will be evaluated.
- 5. Lender Commitment The financial stability of the lender and the form of lender commitment will be evaluated.

Current Experience and Creditworthiness of Developer

- 1. Financial Statements The financial statements of the developer, development entity, key project partners, and guarantors will be evaluated on criteria such as the following:
 - a. Cash ratio of liquid assets to current liabilities
 - b. Debt/equity ratio
 - c. Debt service coverage ratio
 - d. Profit margin
 - e. Return on investment
 - f. Auditor's opinion on fairness of presentation
 - g. Auditor's opinion on appropriateness of going concern assumption
- 2. Developer Experience and Qualifications The developer's qualifications and experience will be evaluated on the following criteria:
 - a. Developer credit history
 - b. Letters of good standing from previous lenders
 - c. Certificate of Good Standing from the Secretary of State and Tax Clearance Certificate from the Department of Revenue
 - d. Previous credit defaults by developer or key partners
 - e. Experience with similar projects
 - f. Number of projects completed by the development team
 - g. Past project experience with the City of Wichita
 - h. References, especially from other municipalities that have worked with the development team

DEVELOPMENT AGREEMENT REQUIRED

Concurrently with, or prior to, the approval of Downtown Development Incentives by the City Council, the City and the developer shall enter into a Development Agreement governing the conduct of the respective parties in relation to the proposed downtown development project. The Development Agreement will include a site plan and elevation drawings or renderings of the project, and a Sources and Uses of Funds table that identifies the various sources of public and private project funds and how they will be used. Among all other provisions, the Development Agreement will set forth the method and manner for disbursement of funds by the respective parties to pay for eligible project costs as well the responsibilities and milestones of the respective parties in project completion. The assignment of Development Agreement rights to any third party assignee will require prior written consent of the City, which may be granted or withheld at the sole discretion of the City.

"GAP" FINANCING REQUIREMENT

Approval of Downtown Development Incentives will require a financial analysis demonstrating that the project would not otherwise be possible without the use of the requested development incentive ("gap" analysis). Parties requesting Downtown Development Incentives will be required to provide the City pro forma cash flow analyses and sources and uses of funds in sufficient detail to demonstrate that reasonably available conventional debt and equity financing sources are not available to fund the entire cost of the project and still provide the developer a reasonable market rate of return on investment. The reasonableness of the rate of return on investment will be determined by dividing net operating income by development cost and comparing that rate to the overall capitalization rate for the land use(s) proposed. Parties requesting Downtown Development Incentives shall use current market conditions and input from local appraisers and lenders in determining the capitalization rate.

BACKGROUND CHECK

The City will conduct a background check on all parties requesting Downtown Development Incentives as well as all project partners. Parties requesting Downtown Development Incentives are required to furnish the City the personal and business information needed to carry out such a background check.

CITY ADMINISTRATIVE FEES

The City shall be paid a non-refundable application fee of \$8,500 with the formal submittal of a request for Downtown Development Incentives. Parties requesting Downtown Development Incentives are responsible for paying the fee charged by the third party financial analysis consultant for preparing a summary report of the applicant's financial statements. The third party financial analysis consultant will be selected by the City through a competitive request for proposals process and will be "on call" to evaluate financial statements as applications are received. The fee charged by the third party financial analysis consultant will vary based on the complexity of the project with more complex projects requiring higher fees. Parties requesting Downtown Development Incentives are responsible for paying the fee charged by the Center for Economic Development and Business Research (CEDBR) to run the Fiscal Impact Model for the project.

DESIGN GUIDELINES

All projects must be consistent with Project Downtown's General Design Guidelines and Project Development Criteria in order for it to be eligible for Downtown Development Incentives. Consistency of project design with the Project Downtown guidelines will be determined by the Downtown Design Resource Center (DDRC). Parties requesting Downtown Development Incentives must participate in the design review process established by the DDRC prior to submitting their request.

All property improvements commenced under a project supported by Downtown Development Incentives shall be subject to City regulations, standards, and policies, including, but not limited to: zoning and subdivision regulations, building codes, the City code, and any applicable design guidelines currently in place or hereafter approved. In addition, project plans and renderings shall be reviewed by the City's Design Council and any suggestions provided by that body will be incorporated into the design of the project unless expressly overruled by the City Manager.

ANNUAL REPORTING

Developers shall provide an annual report to the City no later than 30 days following the anniversary date of the Development Agreement. The annual report shall provide an account of all sources and uses of funds to pay private costs of the project. The City reserves the right to audit the account at its discretion and expense. The annual report also shall detail the developer's progress towards completing all responsibilities and milestones of project completion identified in the Development Agreement.

WAIVER OF POLICY

Should the City Council determine the terms of this policy inappropriate to evaluate a particular request for Downtown Development Incentives, it may, by majority vote, waive or modify the binding effect of this policy in regard to that project.

DOWNTOWN DEVELOPMEN	NT INCE	NTIVES E	VALUATIO	N FORM		
(Circle the appropriate score for eac	h criterion	based on yo	ur individual ev	aluation)		
· · · · · ·		<u> </u>		·		
Date:						
Project:						
Evaluator:						
MINIMUM SUBMITTAL CRITERIA FOR DEVELOPER:						
Development entity or key partners provide at least 10% equity				Yes	No	
Development entity and/or key partners provide a proportional guarantee for public revenue shortfall				Yes	No	
Development entity and key partners pass City vetting process				Yes	No	
Submittal of Letter of Interest from primary lender or equity investor				Yes	No	
MINIMUM SUBMITTAL CRITERIA FOR PROJECT:						
Consistent with Project Downtown's general and district design guidelines				Yes	No	
Economic analysis confirms that project is infeasible "but for" public investr	ment			Yes	No	
Public investment is in a public asset as defined in Project Downtown Plan				Yes	No	
Minimum proportional private to public capital investment ratio of 2 to 1				Yes	No	
Minimum public debt service coverage ratio of 1.2 to 1				Yes	No	
If "No" is circled for any of the above criterion, the project is not eligible for	or further e	valuation.				

PUBLIC BENEFIT/COMPATIBILITY WITH OVERALL DOWNTOWN PLAN			(40 points	possible)		Total Score:		
							Percentage:	
PROJECT LOCATION/DESIGN			Poor	Fair	Moderate	Significant	Exceptional	
LOCATION (extent project location fits Project Downtown priorities)			1	2	3	4	5	

Project Downtown identifies priority locations such as Catalyst Sites and Walkable Development Focus Areas. Projects will be evaluated on the extent to which they utilize these priority locations in a manner that fosters additional development on properties surrounding the project site. Projects also will be evaluated on the ability to connect existing downtown districts and nodes and on impacts to the transportation system, such as providing a strategic walking connection to the river or accommodating a key transit stop.

		Poor	Fair	Moderate	Significant	Exceptional	
DESIGN (extent project design fits priorities of Project Downtown))	1	2	3	4	5	

The design of projects will be evaluated on the extent to which they exceed the minimum thresholds. Project Downtown encourages extraordinary design that contributes to Wichita's identity as a community of distinction. Additionally, the Project Development Criteria identifies encouraged design features for each downtown district as "optional criteria." Projects will be evaluated on the extent to which they contribute to community identity and include encouraged design features.

	Poor	Fair	Moderate	Significant	Exceptional	
LAND USE/PROJECT TYPE fits priorities of Project Downtown	1	2	3	4	5	

The Project Development Criteria identifies encouraged land uses for each downtown district as "optional criteria." Projects will be evaluated on the extent to which they include these encouraged land uses. Projects also will be evaluated on the extent to which they provide a new attraction, destination business, or major employer to the community.

		Fair	Moderate	Significant	Exceptional	
OTHER LOCATION/DESIGN BENEFITS documented by developer		0	1	2	3	
RETURN ON PUBLIC INVESTMENT			< 1.3:1	1.3-1.5:1	>1.5:1	
Extent City's ROI exceeds benefit/cost ratio of 1.3:1 on CEDBR Model			0	1	2	
21216212222		_				
<u>PUBLIC PURPOSE</u>	Poor	Fair	Moderate	Significant	Exceptional	
Extent public asset serves developments beyond the project	Poor 1	Fair 2	Moderate 3	Significant 4	Exceptional 5	
	1	Fair 2 2	Moderate 3 3	Significant 4 4	Exceptional 5	
Extent public asset serves developments beyond the project	1	2 2 2	3 3 3	4	5 5 5	
Extent public asset serves developments beyond the project Extent that project helps accomplish Project Downtown vision & strategies	1	2 2 2 0	3 3 3 1	4	5 5 5 2	

PROPOSED PROJECT CHARACTERISTICS (35 poi	nts possible	<u>'</u> e)					Total Score:	
							Percentage:	
BUSINESS PLAN ASSESSMENT			Poor	Fair	Moderate	Significant	Exceptional	
MARKET ANALYSIS			0	1	2	3	4	
a)Extent Project Downtown market analysis confirms project fe	asibility, or							
b)Alternative, confirmation of project feasibility by 3rd party an	nalysis							
PRO FORMA ANALYSIS						No	Yes	
a) Rate of private investment return falls within contemporary i	market stan	dards				0	1	
						Moderate	Significant	
b) Projected rents/prices consistent with performance of comp	arables					1	2	
c) Projected rate of absorption consistent with performance of	comps					1	2	
						Fairly	Likely	
d) Long-term solvency of the project						0	1	
DEVELOPER EQUITY THIS PROJECT		<12%	12-14%	15-19%	20-24%	25-29%	30%+	
Extent equity exceeds minimum threshold (min 10%)		0	2	4	6	8	10	
				Other	Guaranty	Bond/LOC	Escrow	
Firmness of equity commitment				0	2	4	5	
SHARE OF PUBLIC FUNDING			>2:1	>3:1	>4:1	>5:1	>6:1	
Extent private to public investment ratio exceeds 2:1			1	2	3	4	5	
LENDER COMMITMENT								
FINANCIAL STABILITY OF LENDER					Average	Above Avg.	Superior	
a) Bank or Other Company -3rd Party Rating	Score only	one-bank/	company or in	ndividual	1	2	3	
or alternatively	***	**DO NOT	SCORE BOTH*	***		<750	750+	
b) Individual -Personal Credit Score (FICO)						0	1	
FIRMNESS OF LENDER COMMITMENT					No	w/conditions	w/o cond.	
Commitment letter					0	1	2	

CURRENT EXPERIENCE AND CREDITWORTHINESS OF DEVELOR	PER (25 poi	ints possible)			Total Score:	
					Percentage:	
	Poor	Fair	Moderate	Significant	Exceptional	
FINANCIAL STATEMENTS	2	4	6	8	10	
Based on the summary report from the 3rd party consultant, evaluate the final	ncial strength of t	he developer a	nd the key p	partners.		
DEVELOPER EXPERIENCE & QUALIFICATIONS			Other	Good	Excellent	
Developer Credit History			0	1	2	
			None	One	2 or more	
Letters of Good Standing from Lenders in previous projects			0	1	2	
			Other	Good	Excellent	
Certificate of Good Standing & Tax Clearance Certificate from State				0	1	
			Other	0 last 10 yrs	Never	
Extent of defaults by development entity or key partners			0	1	2	
		None	One	Two	3 or more	
Experience with similar public-private projects, completed by same developme	ent team	0	1	2	3	
				No	Yes	
References, esp from other municipal partners				0	1	
		Fair	Moderate	Significant	Exceptional	
Other Experience documented by the Developer		1	2	3	4	



May 20, 2014

Real Estate Disposition

Request for Proposal (RFP) Advisory Committee Final Report



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I. Background

In order to ensure a fair and open process when disposing of City of Wichita owned real property, Mayor Brewer assembled the Request for Proposal (RFP) Advisory Committee to review current processes and make recommendations for improvement. As a result of the input from the committee, this document outlines the methods and procedures for the disposition of real property owned by the City of Wichita.

II. Overview

The advisory committee identified three categories of real property:

1. Surplus Real Estate

Surplus real estate is defined as property acquired by the City as a result of easements or right of way. Surplus real estate is often remnants not deemed 'developable' and not utilized by the City.

2. Streamlined Request for Proposal (Conditional) Real Estate

This category of real estate is property in use by the City and is considered 'developable'. However, its use is not deemed 'highest and best'. The City will not actively seek proposals, but will respond to an unsolicited credible interest or offer on a 'developable' site.

Unique Situations: In a situation where the developer is in a unique position or competitive advantage by owning adjacent property, the City may forego the RFP process. Example: Builder's Inc. project at First & Waco.

3. Request for Proposal Real Estate

A site determined to be strategic in its offering, the City will proactively solicit offers through an RFP process. The issuance of an RFP will be market-driven and based on the best strategy for maximizing community benefit and financial return.

III. Process Detail

1.0 Surplus Real Estate

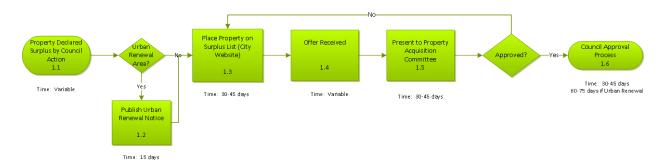
Surplus property will be sold at market value with limited restrictions based on covenants and encumbrances.

Distinctive Criteria:

- 1) No incentives apply
- 2) Sold at market value
- 3) Short list of use controls per deed restrictions
- 4) Declared surplus property by the City Council per Administrative Regulation (AR)

Suppliers	Inputs	Output
Property Management	Real Estate Administrative Regulation (AR)	*Property back on tax
	Property Disposition Memorandum:	rolls
	*Tax key number & legal description	*Generate revenue
	*Location & size of property	*Eliminate maintenance
	*Likely sale value	costs
	*Zoning	
	*Restrictions, covenants, encumbrances	
Property Acquisition	Approval	
Committee (PAC)		
City Council	Final Decision(s)	

Process:



1.1 Property Declared Surplus by City Council Action

Surplus property will be identified by Property Management staff. Standard operating procedure will be followed to obtain City Council approval to categorize the property as 'surplus'.

1.2 Publish Urban Renewal Notice (if applicable)

If property is located in an urban renewal area, a notice of intent to dispose of real estate is required by state law (KSA 17-4750).

This notice is the invitation for proposals and will be published in The Wichita Eagle for two consecutive weeks.

1.3 List Property on City Surplus List

Property Management staff will place the property on the City surplus list on the City website.

The list can be accessed by clicking on the following link: City of Wichita Property Listings

Or copy/paste the following link into your internet

browser: http://wichita.gov/Government/Departments/Economic/Pages/PropertyListings.aspx

1.4 Offer Received

Any offer received will be compared to fair market value.

Additionally, offers will be reviewed for any restrictions, covenants, encumbrances, attached to the property.

A property disposition memorandum will be prepared with staff recommendation and presented to the Property Acquisition Committee (PAC).

The disposition memorandum will include:

- 1) Tax key number & legal description
- 2) Location & size of property
- 3) Likely sale value
- 4) Zoning
- 5) Restrictions, covenants, encumbrances

1.5 Present to Property Acquisition (PAC) Committee

The PAC will either approve or deny the offer based on the property disposition memorandum.

If approved, the offer will forward to the City Council approval process.

If denied, the buyer will be notified and will have the opportunity to submit a new offer.

1.6 City Council Approval Process

Standard operating procedure will be followed for approving an offer on surplus property.

If property is located in an urban renewal area, 30 day notice of intent to dispose of real estate is required by state law (KSA 17-4750) to the City Council. The notice will not be published.

If approved, the transaction can be completed.

If denied, the buyer will notified and will have the opportunity to submit a new offer.

2.0 Conditional Real Estate (Streamlined Request for Proposal)

This category of real estate is property in use by the City and is considered 'developable'. However, its use is not deemed 'highest and best'. The City will not actively seek proposals, but will respond to an unsolicited credible interest or offer on a 'developable' site.

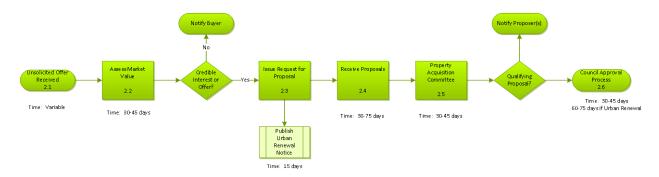
Unique Situations: In a situation where the developer is in a unique position or competitive advantage by owning adjacent property, the City may forego the RFP process. Example: Builder's Inc. project at First & Waco.

Distinctive Criteria:

- 1) Property is located in a planned use area
- 2) Sale of property is conditioned on use generally being consistent with the plan
- 3) Not declared surplus property by the City Council
- 4) Property is currently in use by the City
- 5) City is reacting to an unsolicited offer
- 6) Limited base-level incentives, if any:
 - ✓ NRA,
 - ✓ IRB (no tax abatement)
 - ✓ Façade
 - ✓ Asbestos and Lead Based Paint Abatement
 - ✓ Land assemblage carve out

Suppliers	Inputs	Output
Planning Department	Area plan	*Property use is in line with
Property Management	Real Estate Administrative	area plan
	Regulation	*Property is used for the
Property Acquisition	Approval	highest and best use
Committee		*Property back on the tax
City Council	Final Decision(s)	rolls
		*Eliminate maintenance
		costs

Process:



2.1 Unsolicited Offer Received

When an offer is received on property in use by the City, Property Management staff will review the offer. Staff will determine if the property can be sold based on the 'highest and best' use test.

2.2 Assess Market Value

Property Management will assess market value based on, but not limited to, the following:

- ✓ City utilization of the property
- ✓ Fair Market Value

If staff determines the property is available for a higher and better use, a request for proposal (RFP) will be issued.

If staff determines the property is not available, the buyer will be notified.

2.3 Issue Request for Proposal

Property Management staff will issue an RFP, if the property is deemed available. The RFP will be issued within 15 days of determining the property is available.

If property is located in an urban renewal area, a notice of intent to dispose of real estate is required by state law (KSA 17-4750).

This notice is the invitation for proposals and will be published in The Wichita Eagle for two consecutive weeks.

2.4 Receive Proposals

Proposers will have between 30 and 75 days to respond depending on the size and magnitude of the request. Response time will be specified in the RFP.

2.5 Property Acquisition Committee (PAC)

If qualifying proposals are received, the PAC will select the final candidate based on the selection criteria documented in the RFP.

If approved, the offer will be forwarded to the City Council for consideration.

If denied, the proposer(s) will be notified.

2.6 City Council Approval Process

Standard operating procedure will be followed for approving an offer on property disposal by the City Council.

If property is located in an urban renewal area, 30 day notice of intent to dispose of real estate is required by state law (KSA 17-4750) to the City Council. The notice will not be published.

If approved, the transaction can be completed.

If denied, the proposer will be notified.

3.0 Request for Proposal Real Estate

For a site determined to be strategic in its offering, the City will proactively solicit offers through an RFP process. The issuance of an RFP will be market-driven and based on the best strategy for maximizing community benefit and financial return.

Distinctive Criteria:

- 1) Property is declared a 'developable' site
- 2) Property is located in a planned use area with specified land use goals or is in a high priority location
- 3) City proactively seeks proposals

In addition to the RFP, the following tools will be provided:

- ✓ Binder listing properties/process/requirements
- ✓ Survey
- ✓ Phase 1 environmental assessment
- ✓ Title (Owners and Encumbrance report)
- ✓ Utility map
- ✓ Zoning

Suppliers	Inputs	Output
Property Management	Marketing Tools	*Property use is in line with area plan
Planning Department	Area Plan/RFP development	*Accomplish specified land use goals
Urban Development	Economic Development	*Property back on tax rolls
Office	Feasibility Study	*Eliminate maintenance costs
RFP Review	Proposal/project evaluation	
Committee(s)		
City Council	Final Decision(s)	

Process:



3.1 City Council Approval of RFP Criteria

Staff will draft the RFP which will include the criteria for project selection. Upon approval of the RFP criteria by the City Council, the RFP with be issued within 15 days.

Standard operating procedure will be followed for council consideration and approval.

3.2 Issue Request for Proposal (RFP)

The RFP may be published to the following entities:

- Local promotion/solicitation/ Website, Social Media, etc.
- Regional Economic Development Entities
- International Economic Development Council (IEDC)
- Urban Land Institute (through the Regional Urban Land Institute Chapter)
- Sign on property
- Notification (open solicitation) letter
 - o Brokers
 - o Developers
 - Certified Commercial Investment Managers (CCIM)s
 - o Others depending on project

If property is located in an urban renewal area, a notice of intent to dispose of real estate is required by state law (KSA 17-4750).

This notice is the invitation for proposals and will be published in The Wichita Eagle for two consecutive weeks.

3.3 Receive Proposals

Proposers will have between 30 and 75 days to respond depending on the size and magnitude of the request. Response time will be specified in the RFP.

3.4 Short-list Proposals

Once the proposal period has closed, an initial review of the proposed projects will be conducted by either the Downtown Development Review Committee (DDRC) for downtown projects or the City Manager Review Committee for non-downtown projects.

The short-list of proposals will be generated based on the criteria outlined in the RFP.

Short-listed candidates will receive clarification letters outlining suggestions on how their proposals could be improved based on the RFP criteria.

Short-listed proposals will be invited to submit an application for incentives.

3.5 Developer Submits Application for Incentives

Proposers will have 30-45 days to submit the application for incentives from the issuance of the clarification letter.

Contact the City of Wichita Urban Development Office at 316-268-4528 for information.

3.6 Perform Economic Development Feasibility Study

The economic development feasibility study performed by the Urban Development Office includes return on investment (ROI) calculation and proposer vetting as well as other analyses. The study will take between 30 and 45 business days.

Click on the following link for the City's Economic Development Policy: <u>Economic Development Incentive Policy</u>

Or copy/paste the following link into your internet

browser: http://wichita.gov/Government/Departments/Economic/EconomicDevelopmentDocum ents/City%20of%20Wichita%20Economic%20Development%20Policy.pdf

3.7 Project Selection by Review Committee

Using the project evaluation matrix and the updated proposals based on clarification letter feedback, the best and final proposal will be selected by the appropriate review committee.

Non-voting members of each committee will be appointed by the City Manager.

Following is the list of committee members for both downtown (Downtown Development Review Committee) and non-downtown (City Manager's Review Committee) project selection:

Downtown Development Review Committee (7)	City Manager's Review Committee (5)
Downtown Revitalization Manager	Real Estate Administrator
Urban Development Director	Urban Development Director
Private Sector Business Representative 1	Private Sector Business Representative 1
Private Sector Business Representative 2	Private Sector Business Representative 2
Lender	Lender
Wichita Downtown Development Corp (WDDC) 1	Other member(s) appointed by City Manager
Wichita Downtown Development Corp (WDDC) 2	
Non-voting Members (3)	Non-voting Members (3)
Public Works/Engineering design representative	Public Works/Engineering design representative
Finance Department representative	Finance Department representative
Law Department representative	Law Department representative

Helpful Links:

Downtown Development Policy

Or copy/paste the following link into your internet

browser: http://wichita.gov/Government/Departments/Planning/NR/NR%20Documents/Downto wn%20Development%20Incentives%20Policy.pdf

Downtown Project Evaluation Matrix

Or copy/paste the following link into your internet

browser: http://www.wichita.gov/Government/Departments/Planning/NR/NR%20Documents/Public-Private%20Partnership%20Evaluation%20Criteria.pdf

3.8 City Council Approval Process

Standard operating procedure will be followed for presenting to council for consideration and approval.

If property is located in an urban renewal area, 30 day notice of intent to dispose of real estate is required by state law (KSA 17-4750) to the City Council. The notice will not be published.

Final proposal will be disclosed as part of the City Council approval process.

If approved, the transaction can be completed.

If denied, the proposer will be notified.

IV. Appendix A – Important Links

City of Wichita Property Listings

City/County Economic Development Incentives Policy

Downtown Development Policy

Downtown Project Evaluation Matrix

V. Appendix B – RFP Advisory Committee

Name	Organization
Paul Allen	Allen, Gibbs & Houlik
Christian Ablah	Classic Real Estate
Allen Bell	City of Wichita, Urban Development
CM Jeff Blubaugh	City of Wichita, City Council
Wayne Chambers	High Touch, Inc.
John Clevenger	Commerce Bank
Moji Fanimokun	Wichita Area Realtors
Jeff Fluhr	Wichita Downtown Development
Debbie Gann	Spirit AeroSystems
Jason Gregory	Wichita Downtown Development
Joe Johnson	Schaefer Johnson Cox Frey
Jerry Jones	Slawson Companies
Scott Knebel	City of Wichita, Planning
Robert Layton	City of Wichita, City Manager
Marlin Penner	NAI John T. Arnold Associates
Gary Schmitt	Intrust Bank
Harvey Sorensen - Chairman	Foulston Siefkin
Donna Wright	MidAmerica MBDC

Wichita, Kansas June 9, 2014 10:00 a.m., Monday Conference Room, 12th Floor

MINUTES - BOARD OF BIDS AND CONTRACTS*

The Board of Bids and Contracts met with Marty Strayer, Administrative Assistant, Public Works Engineering in the Chair; Stephen Coberley, Senior Accountant, Finance, representing the Director of Finance, Troy Tillotson, Budget Analyst, Budget Office, Clarence Rose, Senior Buyer, representing Purchasing, Eoghan Miller, Management Fellow, representing the City Manager's Office, and Janis Edwards, Deputy City Clerk, present.

Minutes of the regular meeting dated June 2, 2014, were read and on motion approved.

Bids were opened June 6, 2014, pursuant to advertisements published on:

Stormwater Sewer #682 Repair at Headwall at Arkansas River by Stackman Drive & Museum Boulevard (N Stackman Drive & E Museum Boulevard) (468-84963/133117/) Local traffic shall be maintained. (District VI)

Wildcat Construction - \$34,240.00

On motion the Board of Bids adjourned.

Purchasing Manager recommended that the contracts be awarded as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

On motion the Board recommended that the contracts be awarded as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

	Marty Strayer, Administrative Assistant Department of Public Works
Janis Edwards, CMC Deputy City Clerk	

FORMAL BID REPORT

TO: Robert Layton, City Manager

DATE: June 9, 2014

ENGINEERING BIDS – GARY JANZEN, CITY ENGINEER

June 6, 2014

SWS #682 Repair at Headwall at Arkansas River by Stackman Dr. & Museum Blvd. – Public Works & Utilities Department/Engineering Division

Wildcat Construction

\$34,240.00

ITEMS TO BE PURCHASED AS ADVERTISED IN THE OFFICIAL CITY NEWSPAPER.

C launu Rose
for Melinda A. Walker
Purchasing Manager

STORM SEWER BID TABULATION SUMMARY

BOARD OF BIDS - June 6, 2014

RQ440593

		T =			
FB440092		Engineer's Construction Estimate	Dondlinger & Sons	Duling Construction	Mies Construction
SWS #682 Repair at Headwall at					
Arkansas River by Stackman Dr &	1	1		;	l .
Museum Blvd		\$35,000.00	\$57,500.00		
(N Stackman Dr & E Museum Bivd)	BID BOND				· · · · · · · · · · · · · · · · · · ·
468-84963	ADDENDA	2	Х		
(133117)					
MENTAL SECTION OF THE PROPERTY	SALANDA SARA	THE THE PARTY	PROPERTY AND ADDRESS.	STATE OF THE PROPERTY OF	
		Engineer's Construction Estimate	McCullough	Nowak Construction	Utilities Plus
SWS #682 Repair at Headwall at Arkansas River by Stackman Dr & Museum Blvd		\$35,000.00			
(N Stackman Dr & E Museum Blvd)	BID BOND	400,000.00			
468-84963	ADDENDA	2			
(133117)	`				
ANGEST SANGERS CHEST SANGES BY	Charles and Charles	NAMES OF TAXABLE PARTY.	MEDITOR PROPERTY AND PROPERTY OF THE PARTY O	Mar Marking Company	PROVESTICATION OF THE PROPERTY
		Engineer's Construction Estimate	Wildcat Construction	Stannard Construction d/b/a WB Carter	
SWS #682 Repair at Headwall at			Name and the second		
Arkansas River by Stackman Dr & Museum Blvd					
museum Biva		\$35,000.00	\$34,240.00		
(N Stackman Dr & E Museum Blvd)	BID BOND				
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(133117)		,			
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		Engineer's Construction Estimate			
SWS #682 Repair at Headwall at		Louinate			
Arkansas River by Stackman Dr &	ł				
Museum Blvd		\$35,000.00			
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468-84963	ADDENDA	2			
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CHECKED BY:	20	
REVIEWED BY:	PA	

PRELIMINARY ESTIMATES FOR CITY COUNCIL JUNE 10, 2014

- a. 2014 Sanitary Sewer Reconstruction Phase 5 (north of Pawnee, east of Seneca) (468-84946/620706/664011) Traffic to be maintained during construction using flagpersons and barricades. (District I,II,III,Iv,VI) \$226,000.00
- b. Water Distribution System to serve Casa Bella Addition (north of Pawnee, west of 127th Street East) (448-90145/735504/470177) Traffic to be maintained during construction using flagpersons and barricades. (District II) \$49,000.00
- c. Lateral 3, Main 18, Four Mile Creek Sewer to serve Casa Bella Addition (north of Pawnee, west of 127th Street East) (468-84126/744365/480057) Traffic to be maintained during construction using flagpersons and barricades. (District II) \$47,000.00
- d. 2014 CIP Thermal Crack Repairs Phase 3 (various locations) (472-85136/707063/211527) Traffic to be maintained during construction using flagpersons and barricades. (District I,II) 1,418,787.00
- e. Stormwater Sewer #679 repair at Harry Street, east of Hydraulic Avenue; remove and replace inlet at 21st Street North and Marigold Lane; and install manhole at Patterson Street and Broadway Avenue (East Harry St and South Hydraulic Ave, 21st St N and Marigold Ln, Patterson St and Broadway Ave) (468-84948/133116/133117/) Local traffic shall be maintained. (District I,III,IV) \$35,000.00
- f. 2014 CIP Thermal Crack Repairs Phase 4 (Various Locations) (472-85137/707063/211527) Traffic to be maintained during construction using flagpersons and barricades. (District III) \$933,004.00

May 23, 2014

PRELIMINARY ESTIMATE of the cost of:

2014 Sanitary Sewer Reconstruction Phase 5 (north of Pawnee, east of Seneca)

	LUMP SUM BID ITEMS			
1	Pipe, SS 8"	1,720	lf	
2	Pipe Removed (8")	1,720	lf	
	Point Repair (Site 6)	1	LS	
	MH Frame & Cover, Replaced	4	ea	
	MH Removed	3	ea	
	MH Adjusted, SS (> 2 ft)	1	ea	
	MH Shallow, SS (4')	1	ea	
	MH Standard, SS (4')	1	ea	
	Concrete Pavement Rem & Replaced	50	If	
	Concrete Approach Rem & Replaced	10	ii If	
	Concrete Sidewalk Rem & Replaced	4	if	
		6	lf	
	AC Pvmt Rem & Repl (incl curb/gutter)			
	Fill, Sand (flushed & vibrated)	32	lf ''	
	Fill, Flowable	34	. If	
	Site Clearing	1	LS	
16	Site Restoration	1	LS	المرابثة ماستورية كالمرابعة سترمع المرور والمرابعة والمرابعة الموادة والمرابعة المرابعة المرا
	Transferred Project Section 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1			
	Service Reconnection, Sewer (4")	32	ea	
	Fence Removed & Repl (Site 4)	400	lf	
19	BMP, Construction Entrance	1	ea	
20	BMP, Back of Curb Protection	20	lf	
21	BMP, Erosion Control Mat	33	sy	
22	BMP, Silt Fence	20	lf	
	Construction Subtotal			
	Construction Subtotal			
	Engineering & Inspection			
	Administration (3%)			
	Publication			
	Total Estimated Cost			\$226,000.00
	OLTY OF MICHIEF			
	CITY OF WICHITA)			
	STATE OF KANSAS) SS			
	I do solemnly swear that the above amount is correct, reasona	ble and	iust	. 4
	Too colonning officer that the above although to contest, reasons		,uot.	\mathcal{A}
				Hay Jane
				Gary Janzen, P.F., City Engineer
				Gary Janzen, F.E., City Engineer
	Sworn to and subscribed before me this			· <i>V</i>
		(DATE)		∸
		(5/(12)		
				City Clerk
	664011 (620706) 468-84946			-
	Page			EXHIBIT

May 23, 2014

PRELIMINARY ESTIMATE of the cost of:

Water Distribution System to serve Casa Bella Addition (north of Pawnee, west of 127th Street East)

	LUMP SUM BID ITEMS (735504) - Group 1			
1	Pipe, WL 8"	1,083	lf	
	Valve Assembly, 8"	1,000	ea	
	Valve Assembly, 8", Anchored, Special	1	ea	
4	Fire Hydrant Assembly	2	ea	
	Valve Assembly, Blowoff, 2"	2	ea	
	Site Clearing	1	LS	
	Site Restoration	1	LS	
	Seeding	1	LS	
_	MEASURED QUANTITY BID ITEMS (735504) - Group 1	18 Sept. 18 18 18 18 18 18 18 18 18 18 18 18 18		
9	BMP, Construction Entrance	1	ea	innessensen und kant belände die State (Description oder State ode
	BMP, Silt Fence	855	lf	
	BMP, Erosion Control Blanket	721	sy	
	,		•	
	Construction Subtotal			
	Design Fee Engineering & Inspection Administration Publication Contingency			
	Total Estimated Cost			\$49,000.00
	CITY OF WICHITA) STATE OF KANSAS) SS			
	I do solemnly swear that the above amount is correct, rea	sonable a	nd just.	Gary Janzen, P.A., City Engineer
	Sworn to and subscribed before me this	(DATE)		-
				City Clerk
	470177 (735504) 449 00145			
	470177 (735504) 448-90145 <u>Page</u>			EXHIBIT

May 23, 2014

PRELIMINARY ESTIMATE of the cost of:

Lateral 3, Main 18, Four Mile Creek Sewer to serve Casa Bella Addition (north of Pawnee, west of 127th Street East)

	LUMP/SUM BID ITEMS (744365) - Group 2		\$2	
1	Pipe, SS 8"	743	If	nere a level de la company
2	Air Testing, SS Pipe	743	lf	
	MH, Standard 4'	3	ea	
4	MH Stub, 8"	1	ea	
5	Fill, Flowable	37	lf	
	Easement Grading	1	LS	
	Riser Pipe Assembly (4")	4	ea	
	Site Clearing	1	LS	
	Site Restoration	1	LS	
10	Seeding	1	LS	
	MEASURED QUANTITY BID ITEMS (744365) - G	roup 2		
11	BMP, Inlet Protection	5	ea	ander andre and a service of the service and the service of the se
	BMP, Ditch Barrier	7	ea	
	Construction Subtotal			
	Design Fee			
	Engineering & Inspection			
	Administration			
	Publication			
	Contingency			
	Total Estimated Cost			\$47,000.00
	Total Estimated Jose			Ψ-7,000.00
	CITY OF WICHITA)			
	STATE OF KANSAS) SS			
	I do solemnly swear that the above amount is corre	ect. reasonable and i	ust.	1 1
	•	•		
				X land / and
				Gary Janzey, P.E., City Engineer
	Sworn to and subscribed before me this			
		(DATE)		
	400057 (744005) 400 0 1100			City Clerk
	480057 (744365) 468-84126			574 HB)T
	<u>Page</u>			EXHIBIT

May 23, 2014

PRELIMINARY ESTIMATE of the cost of:

2014 CIP Thermal Crack Repairs Phase 3 (Various Locations)

	MEASURED QUANTITY BID ITEMS (707063)		3.4		
1	2.0" Partial Depth Asphalt Repair (BM-2)(PG64-22)	480	tn		
2	Full Depth Asphalt Repair (BM-2)(PG64-22)	600	tn		
3	Full Depth Thermal Crack Repair (BM-2)(PG64-22)	4,700	lf		
4	Thermal Crack Repair (Standard Duty)(2.5' wide)	47,399	lf		
5	Thermal Crack Repair (Heavy Duty)(2.5' wide)	22,300	łf		
	Construction Subtotal				· · · · · · · · · · · · · · · · · · ·
	Engineering & Inspection				
	Administration				
	Publication				
	Contingency				
	Total Estimated Cost			\$1,4	418,787.00
	CITY OF WICHITA) STATE OF KANSAS) SS				
	! do solemnly swear that the above amount is correct, reaso	nable and just.		Gary Janzen, PAE., Ci	ity Engineer
	Sworn to and subscribed before me this	(DATE)			
	211527 (707063) 472-85136			City Cle	erk
	Page			EXI	HIBIT

May 23, 2014

PRELIMINARY ESTIMATE of the cost of:

Stormwater Sewer #679 repair at Harry Street, east of Hydraulic Avenue, remove and replace inlet at 21st Street North and Marigold Lane and install manhole at Patterson Street and Broadway Avenue (East Harry St and South Hydraulic Ave, 21st St N and Marigold Ln, Patterson St and Broadway Ave)

	LUMP SUM BID ITEMS (133116)	
1	Harry St SWS Repair 1 LS	
	21st & Marigold 1 LS	
	LUMP SUM BID ITEMS (133117)	
3	Patterson & Broadway 1 LS	
	Construction Subtotal	
	Design Fee Engineering & Inspection Administration Publication Water Dept	
	Total Estimated Cost	\$35,000.00
	CITY OF WICHITA) STATE OF KANSAS) SS	
	I do solemnly swear that the above amount is correct, reasonable and just.	Gary Janzeyi, P.B., City Engineer
	Sworn to and subscribed before me this (DATE)	
		City Clerk
	(133116/133117) 468-84948	Ony Oloin
	Page	EXHIBIT

May 30, 2014

PRELIMINARY ESTIMATE of the cost of:

2014 CIP Thermal Crack Repairs Phase 4 (Various Locations)

	Measured Quantity Bid Items (707063)	NOTE OF STATE OF STAT	diam's		
1	2.0" Partial Depth Asphalt Repair (BM-2)(PG64-22)	350	tn	Salar Maria and American and Salar Annother (1994) Salar California (1994) Sal	- Martin of Arthurson Co. Co. Co. Spirit Spi
2	Full Depth Asphalt Repair (BM-2)(PG64-22)	300	tn		
3	Full Depth Thermal Crack Repair (BM-2)(PG64-22)	900	lf		
4	Thermal Crack Repair (Standard Duty)(2.5' wide)	41,200	lf		
5	Thermal Crack Repair (Heavy Duty)(2.5' wide)	10,369	lf		
	Construction Subtotal			_	
	Engineering & Inspection Administration Publication Contingency				
	Total Estimated Cost				\$933,004.00
	CITY OF WICHITA) STATE OF KANSAS) SS				
	I do solemnly swear that the above amount is correct, reason	nable and just.		Gary Janzeg, P.	E. City Engineer
	Sworn to and subscribed before me this	(DATE)		, ,	
	211527 (707063) 472-85137			C	ity Clerk
	Page				EXHIBIT

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: Petitions for Improvements to Emerald Bay Estates Second Addition

(District VI)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the petitions and adopt the resolutions.

<u>Background:</u> The signatures on the petitions represent 100% of the improvement district. The petitions are valid per Kansas Statute.

<u>Analysis:</u> The project will provide paving improvements and a water distribution system required for a new residential development located north of 21st Street North, west of West Street.

<u>Financial Considerations:</u> The petition totals are \$524,000 for the paving and \$97,000 for the water. The funding source for both projects is special assessments.

<u>Legal Considerations:</u> The Law Department has reviewed and approved the petitions and resolutions as to form.

Recommendations/Actions: It is recommended that the City Council approve the petitions, adopt the resolutions, and authorize the necessary signatures.

Attachments: Map, budget sheets, petitions, and resolutions.

First Published in the Wichita Eagle on June 13, 2014

RESOLUTION NO. 14-157

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON <u>SHORELINE/PARADISE</u> FROM THE WEST LINE OF LOT 30, BLOCK 1 TO THE NORTH LINE OF LOT 56, BLOCK 1, EMERALD BAY ESTATES 2ND ADDITION; AND <u>PARADISE COURT</u> FROM THE EAST LINE OF PARADISE TO AND INCLUDING CUL-DE-SAC (NORTH OF 21ST STREET NORTH, WEST OF WEST STREET) 472-85171 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON **SHORELINE/PARADISE** FROM THE WEST LINE OF LOT 30, BLOCK 1 TO THE NORTH LINE OF LOT 56, BLOCK 1, EMERALD BAY ESTATES 2ND ADDITION; AND <u>PARADISE COURT</u> FROM THE EAST LINE OF PARADISE TO AND INCLUDING CUL-DE-SAC (NORTH OF 21ST STREET NORTH, WEST OF WEST STREET) 472-85171 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct pavement on **Shoreline/Paradise** from the west line of Lot 30, Block 1 to the north line of Lot 56, Block 1, Emerald Bay Estates 2nd Addition; and <u>Paradise Court</u> from the east line of Paradise to and including cul-de-sac (north of 21st Street North, west of West Street) 472-85171.

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be **Five Hundred Twenty-Four Thousand Dollars** (\$524,000) exclusive of interest on financing and administrative and financing costs, with 100 Percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **May 1, 2014**, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

EMERALD BAY ESTATES 2ND ADDITION

Lots 31 through 56, Block 1 Lots 1 through 13, Block 2

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

That the following lots and tracts in Emerald Bay Estates 2nd Addition, Wichita, Sedgwick County, Kansas shall each pay 1/39 of the total cost of the improvement district:

EMERALD BAY ESTATES 2ND ADDITION

Lots 31 through 56, Block 1 Lots 1 through 13, Block 2

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

- SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.
- SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.
- SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 1980 Supp. 12-6a01 et seq.
- SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.
- SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wi	ichita, Kansas this 10th day of	
June, 2014.		
	CARL BREWER, MAYOR	
ATTEST:		
KAREN SUBLETT, CITY CLERK		
(SEAL)		
APPROVED AS TO FORM:		
ATTROVED AS TOTORIVI.		
GARY E. REBENSTORF		

DIRECTOR OF LAW

First Published in the Wichita Eagle on June 13, 2014

RESOLUTION NO. 14-158

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING THE IMPROVEMENT OF WATER DISTRIBUTION SYSTEM NUMBER 448-90633 (NORTH OF 21ST STREET NORTH, WEST OF WEST STREET) IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING WATER DISTRIBUTION SYSTEM NUMBER 448-90633 (NORTH OF 21ST STREET NORTH, WEST OF WEST STREET) IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to improve Water Distribution System Number 448-90633 (north of 21st Street North, west of West Street).

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be **Ninety-Seventy Thousand Dollars** (\$97,000) exclusive of interest on financing and administrative and financing costs, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **May 1, 2014**, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

EMERALD BAY ESTATES 2ND ADDITION

Lots 31 through 56, Block 1 Lots 1 through 13, Block 2

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

That the following tracts and lots in Emerald Bay Estates 2nd Addition, Wichita Sedgwick County, Kansas shall each pay 1/39 of the total cost of the improvement district:

EMERALD BAY ESTATES 2ND ADDITION

Lots 31 through 56, Block 1 Lots 1 through 13, Block 2 Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

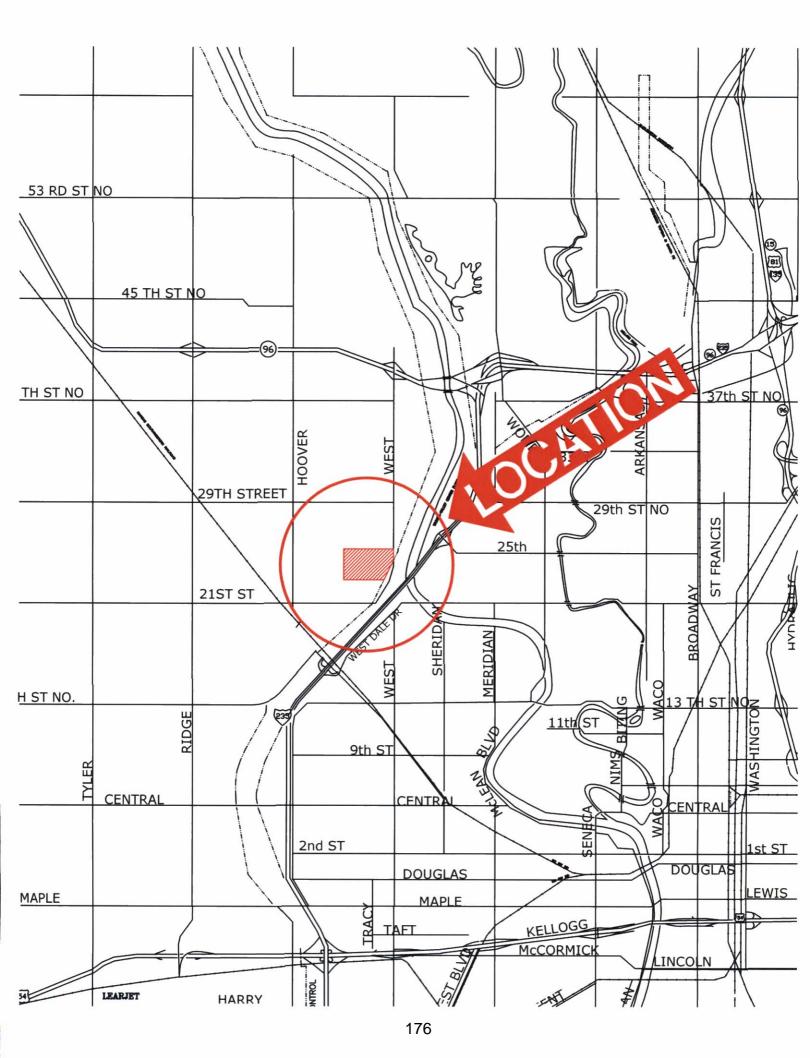
SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 10th day of June, 2014.

	CARL BREWER, MAYOR
ATTEST:	
KAREN SUBLETT, CITY CLERK (SEAL)	
APPROVED AS TO FORM:	
GARY E. REBENSTORF, DIRECTOR OF LAW	



Project Request

NEIGHBORHOOD IMPROVEMENT ORDERED BY WCC PETITION **PETITION PERCENTAGE: 100 RESOLUTION/ORDINANCE #: 14-DIVISION: Engineering** DEPARTMENT: 13 Public Works & Utilities **ENGINEERING REFERENCE #: 472-85171** FUND: 400 Street improvements SUBFUND: 490 Paving N.I. COUNCIL DISTRICT: 06 Council District 6 DATE COUNCIL APPROVED: Jun 10, 2014 REQUEST DATE: PROJECT #: PROJECT TITLE: Shoreline/Paradise for Emerald Bay Estates 2nd Addition PROJECT DETAIL #: 01 PROJECT DETAIL DESCRIPTION: Shoreline/Paradise for Emerald Bay Estates 2nd Addition OCA#: OCA TITLE: Shoreline/Paradise for Emerald Bay Estates 2nd Addition PERSON COMPLETING FORM: Joni Chamberlain PHONE #: 268-4548 PHONE #: 268-4236 PROJECT MANAGER: Julianne Kallman **REVENUE EXPENSE Object Level 3 Budget Object Level 3** Budget 9730 S.A. Bonds \$524,000.00 2999 Contractuals \$524,000.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00 **REVENUE TOTAL:** \$524,000.00 **EXPENSE TOTAL:** \$524,000.00 NOTES: HOLD FOR LOC Print Form SIGNATURES REQUIRED DIVISION HEAD: _____ DATE:____ DEPARTMENT HEAD:

DATE:_____

CITY MANAGER: _____

Project Request

NEIGHBORHOOD IMPROVEMENT ORDERED BY WCC PETITION **PETITION PERCENTAGE: 100 RESOLUTION/ORDINANCE #: 14-DIVISION:** Engineering **DEPARTMENT: 13 Public Works & Utilities ENGINEERING REFERENCE #: 448-90633** FUND: 470 Water Improvements N.I. COUNCIL DISTRICT: 06 Council District 6 DATE COUNCIL APPROVED: Jun 10, 2014 REQUEST DATE: PROJECT #: PROJECT TITLE: WDS 90633 for Emerald Bay Estates 2nd Addition PROJECT DETAIL #: 01 PROJECT DETAIL DESCRIPTION: WDS 90633 for Emerald Bay Estates 2nd Addition OCA TITLE: WDS 90633 for Emerald Bay Estates 2nd Addition OCA#: PERSON COMPLETING FORM: Joni Chamberlain PHONE #: 268-4548 PHONE #: 268-4236 PROJECT MANAGER: Julianne Kallman (NEW BUDGET REVISED BUDGET **REVENUE EXPENSE Object Level 3 Object Level 3 Budget** Budget 9730 S.A. Bonds \$97,000.00 2999 Contractuals \$97,000.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00 \$0.00 REVENUE TOTAL: \$97,000.00 **EXPENSE TOTAL:** \$97,000.00 NOTES: HOLD FOR LOC **Print Form SIGNATURES REQUIRED** DIVISION HEAD: ____ DATE:____ DEPARTMENT HEAD: ___ DATE:

DATE:_____

CITY MANAGER: ___

RECFIVED

PAVING PETITION

MAY B "14

To the Mayor and City Council Wichita, Kansas

CITY CLERN UFFICE

Dear Council Members:

 We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

EMERALD BAY ESTATES 2ND ADDITION

472 - 85171

Lots 31 – 56, Block 1, Lots 1 – 13, Block 2

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq., as amended, as follows:

(a) That there be constructed pavement on **SHORELINE/PARADISE** from the west line of Lot 30, Block 1 to the North line of Lot 56, Block 1, Emerald Bay Estates 2nd Addition; and **PARADISE CT.** from the east line of Paradise to and including cul-de-sac

That said pavement between aforesaid limits be constructed with plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas. Drainage is to be installed where necessary, and sidewalks to be constructed on one side of all through, non cul-de-sac streets.

- (b) That the estimated and probable cost of the foregoing improvement being Five Hundred Twenty Four Thousand Dollars (\$524,000.00), exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above setforth is hereby increased at a pro rata of 1 percent per month from and after May 1, 2014.
- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign,

repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

(d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis:

That the following lots and tracts in Emerald Bay Estates 2nd Addition, Wichita, Sedgwick County, Kansas shall each pay 1/39 of the total cost of the improvement district:

EMERALD BAY ESTATES 2ND ADDITION

Lots 3.1 - 56, Block 1, Lots 1 - 13, Block 2

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

- 2. It is requested that the improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04.
- 3. That names may not be withdrawn from this petition by the signers thereof after the Governing body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.
- That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing

LEGAL DESCRIPTION

SIGNATURE

DATE

EMERALD BAY ESTATES 2ND ADDITION

Lots 31 – 56, Block 1 Lots 1 – 13, Block 2

Gaylan Wett, Jr.

Managing Member, SNAR LLC

AFFIDAVIT

The undersigned, being duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the presence of one of the resident owners whose signature appears on the petition. Eric J Ølover
924 N. Main
Address
264-8008
Telephone number
Sworn to and subscribed before me this
Deputy City Clerk



WATER DISTRIBUTION SYSTEM PETITION

MAY 8 '14.

CITY CLUM UFFICE

To the Mayor and City Council Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

EMERALD BAY ESTATES 2ND ADDITION

448 - 90633

Lots 31 – 56, Block 1 Lots 1 – 13 Block 2

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq., as amended, as follows:

- (a) That there be constructed a water distribution system, including necessary water mains, pipes, valves, hydrants, meters and appurtenances to serve the area described above, according to plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas.
- (b) That the estimated and probable cost of the foregoing improvements being Ninety Seven Thousand Dollars (\$97,000.00) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above setforth is hereby increased at the pro rata rate of 1 percent per month from and after May 1, 2014.
- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.

(d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis:

That the following tracts and lots in Emerald Bay Estates 2nd Addition, Wichita, Sedgwick County, Kansas shall each pay 1/39 of the total cost of the improvement district:

EMERALD BAY ESTATES 2ND ADDITION

Lots 31 – 56, Block 1 Lots 1 – 13 Block 2

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

- 2. It is requested that the improvement hereby petitioned be made without notice and hearing, which, but for this request, would be required by K.S.A. 12-6a04.
- 3. That names may not be withdrawn from this petition by the signers thereof after the Governing Body commences consideration of the petition or later than seven (7) days after filing, whichever occurs first.
- 4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

ĽEGAL	DESCR	IPTI	ON
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SIGNATURE

DATE

EMERALD BAY ESTATES 2ND ADDITION

Lots 31-56, Block 1 Lots 1-13, Block 2

Gaylan Nett, Jr.

Managing Member, SNAR LLC

AFFIDAVIT

The undersigned, being duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the presence of one of the resident owners whose signature appears on the petition.

924 N. Main

Address

264-8008

Telephone number

Eric J Glover

Sworn to and subscribed before me this _____

day of Vall

Deputy City Clerk

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: East Kellogg from Cypress to Wiedemann - Relocation Agreements with Kansas

Gas Service (District II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the agreements.

Background: On October 8, 2013, the City Council approved a construction budget for the expansion of East Kellogg between Cypress and Wiedemann. The proposed improvements require the relocation of a natural gas utility regulator station and gas lines owned by Kansas Gas Service (KGS). The regulator station and 96% of the gas line is located in a private easement, making the City responsible for the majority cost of relocation.

<u>Analysis:</u> Separate agreements with KGS have been prepared to provide relocation of the regulator station and gas lines. All work associated with the relocation will be completed by KGS as part of the East Kellogg expansion between Cypress and Wiedemann.

<u>Financial Considerations</u>: The estimated cost of relocation is \$495,488 for the regulator station and \$483,433 for the gas line. The City is responsible for 100% of the cost of the regulator station and 96% of the gas main relocation cost. Funding is available in the existing approved budget, which is funded by Local Sales Tax. The agreements provide that any additional work or cost beyond this estimate, if needed, will be agreed upon in advance by both parties and brought back to the City Council for approval through a supplemental agreement.

Legal Considerations: The Law Department has reviewed and approved the agreements as to form.

<u>Recommendation/Action:</u> It is recommended that the City Council approve the agreements and authorize the necessary signatures.

Attachments: Agreements.

UTILITY AGREEMENT

Sedgwick County	Dated:
·	City of Wichita Project: 472-85031

General Location: East Kellogg (US-54/400)-Webb/KTA Interchange

THIS AGREEMENT is entered into between the City of Wichita (City) and <u>Kansas Gas Service</u>, a <u>Division of ONEGAS</u>, <u>Inc.</u>(Company).

WHEREAS, the City proposes a highway improvement project on <u>East Kellogg (US-54/400)</u> and <u>Webb/KTA Interchange</u>, described above by Project Number and Location and shown on the Project Plans, and

WHEREAS, the Company is owner of certain facilities located within the East Town Border Station site on the northeast corner of Webb Road East Kellogg Avenue as shown on the Project Plans (facilities) and these facilities are located on private right-of-way, in whole or in part, and not now entirely located upon existing highway right-of-way, and

WHEREAS, the Company's facilities need to be adjusted, altered, or relocated so the City may construct the Project and the Company may maintain its present services.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree:

- 1. Upon receipt of formal written authorization from the City, the Company will proceed without unnecessary delay to make the changes to its facilities described in Exhibits 5 and 6-Town Border (utility plans) in accordance with Paragraph 17 of this Agreement. The Company prepared Exhibits 5 and 6-Town Borders/District Regulators, which is attached to an incorporated into this Agreement.
- 2. Company certifies that its facilities are located on private right-of-way, in whole or in part, and are now located entirely upon existing highway right-of-way or other public property. The estimated costs of right-of-way, preliminary engineering, labor, equipment, materials issued, materials returned, overhead and other items, as well as any credits which may be due the City for Company elected betterments, salvaged materials and extended service life (where applicable) are listed in detail on Exhibits 5 and 6-Town Border (utility plans).
- 3. This Agreement is subject to and the Parties agree to comply with 23 C.F.R. Part 645 Subpart A ("Utility Relocations, Adjustments, and Reimbursement") (23 C.F.R. 645.01 *et seq.*), 23 C.F.R. Part 645 Subpart B ("Accommodation Utilities")(23 C.F.R. 645.201 *et seq.*), and the current Kansas Department of Transportation Utility Accommodation Policy (UAP). The UAP is incorporated by reference into this Agreement.
- 4. The City grants the Company the right to locate and maintain its facilities upon highway right-of-way as shown on said Exhibits 5 and 6- Town Border (utility plans).
- 5. If future road work requires any changes to or relocations of Company's facilities, previously located on private right(s)-of-way but now located upon highway right-of-way as shown on Exhibits 5 and 6 Town Border (utility plans), the City will pay the cost of such changes or relocations.

- 6. The company's easement rights or other interests in the property included in the proposed highway right-of-way as shown on Exhibits 5 and 6 –Town Border (utility plans) are subordinate to the City's right and privilege to use the highway right-of-way without restriction or limitation as long as the City is using such right-of-way for public highway purposes. The City's rights extend to all air rights, surface rights, and below-surface rights appropriate for the construction, operation, and maintenance of the highway. Providing the Company does not interfere with highway construction, operation, and maintenance, the Company may maintain its relocated or altered facilities; construct additional facilities under, over, through, and across the property if the Company's easement allows such construction; or perform any other act the Company's easement allows. In exercising its rights, the Company shall conform to all federal and state law, statutes, and regulations.
- 7. Company certifies and has provided evidence showing the Company has right of occupancy on private right-of-way by holding the fee, an easement, or other property interest. Company certifies that no deed, easement, agreement, or other document granting Company's existing right of occupancy on the private right-of-way requires Company to relocate its facilities for public purposes at Company's own expense.
- 8. City certifies that payment for the utility relocation does not violate Kansas law or any existing contract between the Company and the City.
- 9. Company shall notify the City of Wichita's City Engineer at Wichita, Kansas by phone Shawn Mellies, (316)268-4632, five days in advance of the time it expects to start work under this Agreement.
- 10. The company shall notify City of Wichita's City Engineer in charge of said project when beginning, discontinuing, resuming, and upon completing the work.
 - 11. The method of computing the actual relocation costs shall be:

Actual and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by 23 C.F.R. 645 Subpart A.

- 12. Company shall keep a detailed and accurate account of all labor, materials, supplies, incidentals, and all other costs involved in performing the work for three years after the date the Company receives final payment. City Engineer in charge of said project or any authorized agent of City or the Federal Highway Administration (FHWA) shall have access at all times to such records.
- 13. Upon completion of the work in accordance with said plans and estimates and upon receipt of a detailed final statement of cost prepared in accordance with the 23 C.F.R. 645 Subpart A, the City will reimburse the Company for 95% of the total amount of final billing pending final audit. Upon completion of final audit, the City will reimburse the Company for the total amount of the final billing found eligible for payment by audit by the City and/or FHWA. It is fully understood by and between the parties hereto that the required work in connection with the Company's facilities may be directly related to a City of Wichita road project providing for Federal reimbursement of a percentage of the cost. It is further agreed and understood that the Company will reimburse the City, on demand, any sums disallowed to the City by the Federal Highway Administration, for non-compliance by the Company with the terms and conditions set out in the 23 C.F.R. 645 Subpart A, hereinbefore referred to. Local governmental units and Indian Tribal governments shall comply with OMB A-128.
- 14. At Company's request, the City will reimburse the Company for 95% of the cost reflected on monthly progress statements for partially completed work. However, the Company shall submit no monthly progress statement with an amount earned of less than \$50,000. The Company shall submit supporting statements with the Company's request for such intermediate progress payments.

After the Company completes the work according to the utility plans and after the City receives a detailed final cost statement that complies with 23 C.F.R. 645 Subpart A, the City will reimburse the Company for 95% of the total amount of final billing less intermediate progress payments, pending final audit. Upon completing the final audit, the City will reimburse the Company the total amount of the final billing that City and/or FHWA find eligible for payment by audit less intermediate progress payments.

The work required in this Agreement is being funded in whole or in part with federal funds. The Company will reimburse the City any sums disallowed under 23 C.F.R. Part 645 or under 48 C.F.R. Part 31 ("Contract Cost Principles and Procedures") (48 C.F.R. 31.000 *et seq.*). Sums disallowed include expenses paid for relocating the Company's facilities from existing highway right-of-way or other public property to the proposed highway right-of-way and expenses paid when the Company had an existing obligation to relocate it its own expense, among others. Local government units and Indian Tribal governments shall comply with OMB A-128.

- 15. To be eligible for reimbursement, changes in the original scope of work or additional adjustments not covered in Paragraph 17 of this Agreement shall be submitted on a supplemental agreement (or change order) and approved by the Company and the City before the Company makes such changes or adjustments.
- 16. Additional costs or revisions in ratio or participation resulting from changes or adjustments under Paragraph15 will become effective with submission of a final change order prior to or concurrent with final billing. Approval of such change order and/or ratio of participants will place the billing in line for audit and payment.
 - 17. A. Description of work to be performed:

Relocate natural gas pipelines and appurtenances thereto located within the East Town Border Station to clear the proposed highway construction as shown on Exhibits 5 and 6.

- B. Method of accomplishing work shall be by the Company.
- C. Estimated total cost of work to be accomplished \$495,488.
- D. The percentage of total costs of completed work to be borne by the City is 100%. Salvage value to be credited to project.
- E. Time for Completion of Work: 150 days after receipt of Authorization to Proceed from the City, unless extended for unusually severe weather. Usually severe weather is adverse weather that at the time of year in which it occurred is abnormal for the place in which it occurred.
- F. The Company or the Company's contractor will furnish and erect the required traffic control signing and devices according to the attached Exhibits and the "Manual of Uniform Traffic Control Devices".
- G. Special Provisions:

"All backfill within the highway right-of-way limits is to be compacted to a density equal to or greater than the density of the surrounding soil."

18. The Company shall maintain and pay all expenses necessary to maintain the Company's facilities located within the right-of-way of Project No. 472-85031. The Company shall take necessary and reasonable safety measures to protect the traveling public.

If the Company's maintenance obligation requires work within the highway right-of-way, the Company shall first obtain a written work permit from the proper authority. This permit shall contain reasonable regulations relating to such maintenance.

The Company may open and disturb the surface of the highway right-of-way without a work permit if an emergency exists that endangers the public's safety and requires immediate preventive action or repair. Immediately upon discovering the emergency, the Company shall notify the Kansas Highway Patrol, the KDOT Bureau of Construction and Maintenance, and the City of Wichita. The Company shall request a work permit from the proper authority no later than the second working day following the emergency.

The Company shall not service its facilities from the highway, highway shoulder, or highway ramps. Exception: if an emergency exists that makes other ingress and egress temporarily impossible, the Company may use the surfaced area of the highway right-of-way to approach the distressed lines or facilities and the Company may use the surfaced shoulder for temporary parking.

- 19. The Company agrees to hold the City and the City's authorized representatives harmless from and indemnify the City for all claims, suits, damages (whether property damages, personal injury damages, or economic damages) and costs (reasonable attorney's fees and defense costs) resulting from the Company's failure to comply with its contract obligations under this Agreement, resulting from the Company's negligent acts, errors, or omissions in relocating its facilities as provided in Paragraph 17, or all of the above. The Company's liability for personal injuries and property damage shall not exceed the liability limits in the Kansas Tort Claims Act, K.S.A. 75-6101 et seq. The Company shall have no obligation to hold the City or the City's authorized representatives harmless from and indemnify these persons for the City's or the City's representatives' own negligence.
- 20. The City agrees to hold the Company and the Company's authorized representatives harmless from and indemnify the Company for all claims suits, damages (whether property damages, personal injury damages, or economic damages) and costs (reasonable attorney's fees and defense costs) resulting from City's failure to comply with its contract obligations under this Agreement. The City's liability for personal injuries and property damage shall not exceed the liability limits in the Kansas Tort Claims Act K.S.A. 75-6101 et seq. The City shall have no obligation to hold the Company or the Company's authorized representatives harmless from and indemnify these persons for the Company's or the Company's representatives own negligence.
 - 21. Kansas law governs this Agreement.
- 22. Kansas law (K.S.A. 46-239(c)) requires this agency to report all contracts entered into with any legislator, or any member of a firm of which a legislator is a member, under which the legislator or member of the firm is to perform services for this agency for compensation. Consequently, please indicate below if this contract is being entered into with a legislator or a firm in which a legislator is a member.

 Yes, this contract is with a legislator or a firm in which a legislator is a member.
That legislator is:
Business Phone:
Address (Street, City, State, Zip Code)
5

- \underline{X} No, this contract is not being entered into with a legislator or a firm in which a legislator is a member
- 23. This Agreement creates no third party beneficiaries and authorizes no third party to maintain a suit for damages under this Agreement as a third party beneficiary or in any other capacity.
 - 24. This Agreement binds the Parties and the Parties' successors and assigns.
- 25. In signing this Agreement, the parties and the individual person signing represent that the person signing has the authority and capacity to execute and legally bind the respective entity to this Agreement.
- 26. All steel, iron, and their coatings that are to be permanently incorporated into the project shall be produced in the United States unless a waiver is approved by the City.

Executed by the COMPANY this	Executed by the CITY this
day of 2014	day of2014
COMPANY: Kansas Gas Service.	CITY OF WICHITA
BY: Dennis J. Okenfuss TITLE: VP Operations, Kansas Gas Service ATTEST:	BY: Carl Brewer Mayor, City of Wichita
BY:	BY:Karen Sublett
FEIN # <u>73-1520922</u>	City Clerk
Send checks to: <u>Kansas Gas Service</u> <u>C/O Glenn Bowman</u> 1021 E 26 th North	APPROVED AS TO FORM:
Wichita, KS 67207	Gary Rebenstorf, City Attorney

UTILITY AGREEMENT

Sedgwick County	Dated:
	City of Wichita Project: 472-85031

General Location: East Kellogg (US-54/400)-Webb/KTA Interchange

THIS AGREEMENT is entered into between the City of Wichita (City) and <u>Kansas Gas Service</u>, a <u>Division of ONEGAS</u>, <u>Inc.</u>(Company).

WHEREAS, the City proposes a highway improvement project on <u>East Kellogg (US-54/400)</u> and <u>Webb/KTA Interchange</u>, described above by Project Number and Location and shown on the Project Plans, and

WHEREAS, the Company is owner of certain facilities located between Kellogg Avenue stations 521+00 and 2570+00 as shown on the Project Plans (facilities) and these facilities are located on private right-of-way, in whole or in part, and not now entirely located upon existing highway right-of-way, and

WHEREAS, the Company's facilities need to be adjusted, altered, or relocated so the City may construct the Project and the Company may maintain its present services.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree:

- 1. Upon receipt of formal written authorization from the City, the Company will proceed without unnecessary delay to make the changes to its facilities described in Exhibits 1-piping (utility plans) in accordance with Paragraph 17 of this Agreement. The Company prepared Exhibit 2-Piping, which is attached to and incorporated in this Agreement.
- 2. Company certifies that its facilities are located on private right-of-way, in whole or in part, and are now located entirely upon existing highway right-of-way or other public property. The estimated costs of right-of-way, preliminary engineering, labor, equipment, materials issued, materials returned, overhead and other items, as well as any credits which may be due the City for Company elected betterments, salvaged materials and extended service life (where applicable) are listed in detail on Exhibits 2-Piping. The Company has included in Exhibit 1-Piping (utility plans) all estimated costs anticipated in relocating those parts of the Company's facilities of 570' of 12", 85' or 8", 2,150' of 6", 4,105' of 4" and 1,920' of 2" (pipe) affected by City Highway Project 472-85031.

See Paragraph 17 D for City's pro rata share of total costs. Exhibit 2-Piping is attached to and incorporated into this Agreement.

- 3. This Agreement is subject to and the Parties agree to comply with 23 C.F.R. Part 645 Subpart A ("Utility Relocations, Adjustments, and Reimbursement") (23 C.F.R. 645.01 *et seq.*), 23 C.F.R. Part 645 Subpart B ("Accommodation Utilities")(23 C.F.R. 645.201 *et seq.*), and the current Kansas Department of Transportation Utility Accommodation Policy (UAP). The UAP is incorporated by reference into this Agreement.
- 4. The City grants the Company the right to locate and maintain its facilities upon highway right-of-way as shown on said Exhibits 1-Piping.

- 5. If future road work requires any changes to or relocations of Company's facilities, previously located on private right(s)-of-way but now located upon highway right-of-way as shown on Exhibit A-Piping, the City will pay the cost of such changes or relocations.
- 6. The company's easement rights or other interests in the property included in the proposed highway right-of-way as shown on Exhibit 1-Piping (utility plans) are subordinate to the City's right and privilege to use the highway right-of-way without restriction or limitation as long as the City is using such right-of-way for public highway purposes. The City's rights extend to all air rights, surface rights, and below-surface rights appropriate for the construction, operation, and maintenance of the highway. Providing the Company does not interfere with highway construction, operation, and maintenance, the Company may maintain its relocated or altered facilities; construct additional facilities under, over, through, and across the property if the Company's easement allows such construction; or perform any other act the Company's easement allows. In exercising its rights, the Company shall conform to all federal and state law, statutes, and regulations.
- 7. Company certifies and has provided evidence showing the Company has right of occupancy on private right-of-way by holding the fee, an easement, or other property interest. Company certifies that no deed, easement, agreement, or other document granting Company's existing right of occupancy on the private right-of-way requires Company to relocate its facilities for public purposes at Company's own expense.
- 8. City certifies that payment for the utility relocation does not violate Kansas law or any existing contract between the Company and the City.
- 9. Company shall notify the City of Wichita's City Engineer at Wichita, Kansas by phone Shawn Mellies, (316)268-4632, five days in advance of the time it expects to start work under this Agreement.
- 10. The company shall notify Shawn Mellies, City of Wichita's City Engineer in charge of said project when beginning, discontinuing, resuming, and upon completing the work.
 - 11. The method of computing the actual relocation costs shall be:
 - Actual and related indirect costs accumulated in accordance with a work order accounting procedure prescribed by 23 C.F.R. 645 Subpart A.
- 12. Company shall keep a detailed and accurate account of all labor, materials, supplies, incidentals, and all other costs involved in performing the work for three years after the date the Company receives final payment. City Engineer in charge of said project or any authorized agent of City or the Federal Highway Administration (FHWA) shall have access at all times to such records.
- 13. Upon completion of the work in accordance with said plans and estimates and upon receipt of a detailed final statement of cost prepared in accordance with the 23 C.F.R. 645 Subpart A, the City will reimburse the Company for 95% of the total amount of final billing pending final audit. Upon completion of final audit, the City will reimburse the Company for the total amount of the final billing found eligible for payment by audit by the City and/or FHWA. It is fully understood by and between the parties hereto that the required work in connection with the Company's facilities may be directly related to a City of Wichita road project providing for Federal reimbursement of a percentage of the cost. It is further agreed and understood that the Company will reimburse the City, on demand, any sums disallowed to the City by the Federal Highway Administration, for non-compliance by the Company with the terms and conditions set out in the 23 C.F.R. 645 Subpart A, hereinbefore referred to. Local governmental units and Indian Tribal governments shall comply with OMB A-128.

14. At Company's request, the City will reimburse the Company for 95% of the cost reflected on monthly progress statements for partially completed work. However, the Company shall submit no monthly progress statement with an amount earned of less than \$50,000. The Company shall submit supporting statements with the Company's request for such intermediate progress payments.

After the Company completes the work according to the utility plans and after the City receives a detailed final cost statement that complies with 23 C.F.R. 645 Subpart A, the City will reimburse the Company for 95% of the total amount of final billing less intermediate progress payments, pending final audit. Upon completing the final audit, the City will reimburse the Company the total amount of the final billing that City and/or FHWA find eligible for payment by audit less intermediate progress payments.

The work required in this Agreement is being funded in whole or in part with federal funds. The Company will reimburse the City any sums disallowed under 23 C.F.R. Part 645 or under 48 C.F.R. Part 31 ("Contract Cost Principles and Procedures") (48 C.F.R. 31.000 *et seq.*). Sums disallowed include expenses paid for relocating the Company's facilities from existing highway right-of-way or other public property to the proposed highway right-of-way and expenses paid when the Company had an existing obligation to relocate it its own expense, among others. Local government units and Indian Tribal governments shall comply with OMB A-128.

- 15. To be eligible for reimbursement, changes in the original scope of work or additional adjustments not covered in Paragraph 17 of this Agreement shall be submitted on a supplemental agreement (or change order) and approved by the Company and the City before the Company makes such changes or adjustments.
- 16. Additional costs or revisions in ratio or participation resulting from changes or adjustments under Paragraph 15 will become effective with submission of a final change order prior to or concurrent with final billing. Approval of such change order and/or ratio of participants will place the billing in line for audit and payment.
 - 17. A. Description of work to be performed:

Relocate 570' of 12", 85' of 8", 2,150' of 6", 4,105' of 4" and 1,920' of 2" steel and plastic natural gas pipeline and appurtenances thereto clear the proposed highway construction as shown on Exhibits 1, 2, 3 and 4.

- B. Method of accomplishing work shall be by Contract. (The Company has furnished the City with evidence that it is not adequately staffed or equipped to perform the work and agrees to comply with 23 C.F.R 645 Subpart A.).
- C. Estimated total cost of work to be accomplished \$483,433.00
- D. The percentage of total costs of completed work to be borne by the City is <u>95.64%</u>. Salvage value to be credited to project.
- E. Time for Completion of Work: 365 days after receipt of Authorization to Proceed from the City, unless extended for unusually severe weather. Usually severe weather is adverse weather that at the time of year in which it occurred is abnormal for the place in which it occurred.
- F. The Company or the Company's contractor will furnish and erect the required traffic control signing and devices according to the attached Exhibits and the "Manual of Uniform Traffic Control Devices".

G. Special Provisions:

"All backfill within the highway right-of-way limits is to be compacted to a density equal to or greater than the density of the surrounding soil."

18. The Company shall maintain and pay all expenses necessary to maintain the Company's facilities located within the right-of-way of Project No. <u>472-85031</u>. The Company shall take necessary and reasonable safety measures to protect the traveling public.

If the Company's maintenance obligation requires work within the highway right-of-way, the Company shall first obtain a written work permit from the proper authority. This permit shall contain reasonable regulations relating to such maintenance.

The Company may open and disturb the surface of the highway right-of-way without a work permit if an emergency exists that endangers the public's safety and requires immediate preventive action or repair. Immediately upon discovering the emergency, the Company shall notify the Kansas Highway Patrol, the KDOT Bureau of Construction and Maintenance, and the City of Wichita. The Company shall request a work permit from the proper authority no later than the second working day following the emergency.

The Company shall not service its facilities from the highway, highway shoulder, or highway ramps. Exception: if an emergency exists that makes other ingress and egress temporarily impossible, the Company may use the surfaced area of the highway right-of-way to approach the distressed lines or facilities and the Company may use the surfaced shoulder for temporary parking.

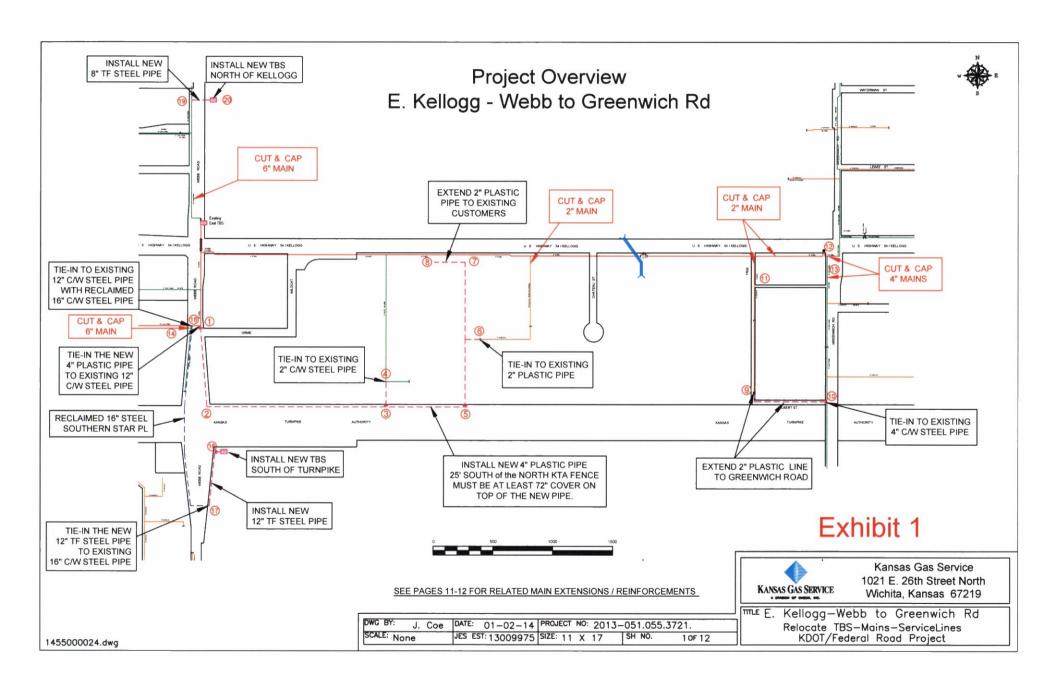
- 19. The Company agrees to hold the City and the City's authorized representatives harmless from and indemnify the City for all claims, suits, damages (whether property damages, personal injury damages, or economic damages) and costs (reasonable attorney's fees and defense costs) resulting from the Company's failure to comply with its contract obligations under this Agreement, resulting from the Company's negligent acts, errors, or omissions in relocating its facilities as provided in Paragraph 17, or all of the above. The Company's liability for personal injuries and property damage shall not exceed the liability limits in the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq*. The Company shall have no obligation to hold the City or the City's authorized representatives harmless from and indemnify these persons for the City's or the City's representatives' own negligence.
- 20. The City agrees to hold the Company and the Company's authorized representatives harmless from and indemnify the Company for all claims suits, damages (whether property damages, personal injury damages, or economic damages) and costs (reasonable attorney's fees and defense costs) resulting from City's failure to comply with its contract obligations under this Agreement. The City's liability for personal injuries and property damage shall not exceed the liability limits in the Kansas Tort Claims Act K.S.A. 75-6101 *et seq.* The City shall have no obligation to hold the Company or the Company's authorized representatives harmless from and indemnify these persons for the Company's or the Company's representatives own negligence.
 - 21. Kansas law governs this Agreement.
- 22. Kansas law (K.S.A. 46-239(c)) requires this agency to report all contracts entered into with any legislator, or any member of a firm of which a legislator is a member, under which the legislator or member of the firm is to perform services for this agency for compensation. Consequently, please indicate below if this contract is being entered into with a legislator or a firm in which a legislator is a member.

Yes, this contract is with a legislator or a firm in which a legislator is a member

That legislator is:
Business Phone:
Address (Street, City, State, Zip Code)

- \underline{X} No, this contract is not being entered into with a legislator or a firm in which a legislator is a member
- 23. This Agreement creates no third party beneficiaries and authorizes no third party to maintain a suit for damages under this Agreement as a third party beneficiary or in any other capacity.
 - 24. This Agreement binds the Parties and the Parties' successors and assigns.
- 25. In signing this Agreement, the parties and the individual person signing represent that the person signing has the authority and capacity to execute and legally bind the respective entity to this Agreement.
- 26. All steel, iron, and their coatings that are to be permanently incorporated into the project shall be produced in the United States unless a waiver is approved by the City.

Executed by the COMPANY this	Executed by the CITY this			
day of 2014	day of2014			
COMPANY: Kansas Gas Service.	CITY OF WICHITA			
BY: Dennis J. Okenfuss TITLE: VP Operations, Kansas Gas Service ATTEST:	BY: Carl Brewer Mayor, City of Wichita			
	DV			
BY: FEIN # <u>73-1520922</u>	BY: Karen Sublett City Clerk			
Send checks to: <u>Kansas Gas Service</u> <u>C/O Glenn Bowman</u> 1021 E 26 th North	APPROVED AS TO FORM:			
Wichita, KS 67207	Gary Rebenstorf, City Attorney			



SUMMARY OF GAS MAINS							
POINTS	SPAN	SIZE	TYPE	TOTALS	TEST	DURATION	REMARKS
1 - 2	675'	4"	PLASTIC		100 psig	24 HOURS	- - -
2 - 3	1,240'	4"	PLASTIC		100 psig	24 HOURS	
3 - 4	210'	4"	PLASTIC		100 psig	24 HOURS	
3 - 5	1,390'	4"	PLASTIC		100 psig	24 HOURS	
5 - 6	590'	4"	PLASTIC	4,105'	100 psig	24 HOURS	
6 - 6.5	200'	2"	PLASTIC		100 psig	24 HOURS	
6 - 7	480'	2"	PLASTIC		100 psig	24 HOURS	
7 - 8	550'	2"	PLASTIC		100 psig	24 HOURS	
9 - 10	690'	2"	PLASTIC	1,920'	100 psig	24 HOURS	
16 - 17	570'	12"	STEEL	570'	100 psig	24 HOURS	
17 - 18	1,820'	16"	STEEL	1,820'	100 psig	24 HOURS	RECLAIMED PIPE
19 - 20	85'	8"	STEEL	85'	100 psig	1 HOUR	
29 - 30	230'	6"	PLASTIC		100 psig	24 HOURS	
29 - 31	650'	6"	PLASTIC		100 psig	24 HOURS	
35 - 36	775'	6"	PLASTIC		100 psig	24 HOURS	
37 - 38	495'	6"	PLASTIC	2,150'	100 psig	24 HOURS	
				10,650'			

Exhibit 2

KANSAS GAS SERVICE

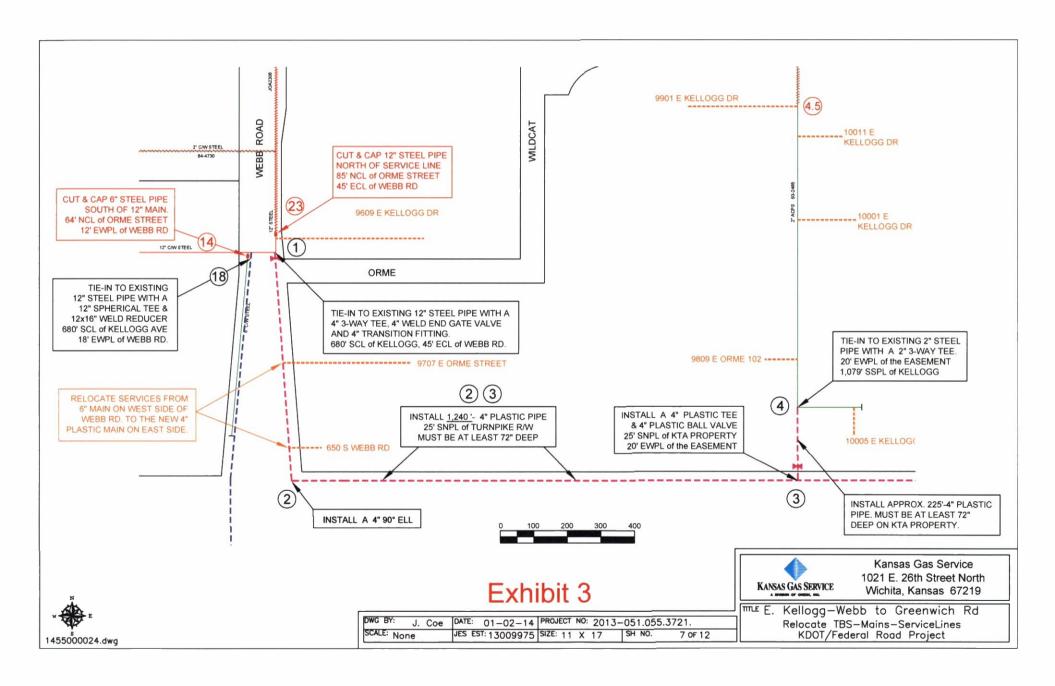
Kansas Gas Service 1021 E. 26th Street North Wichita, Kansas 67219

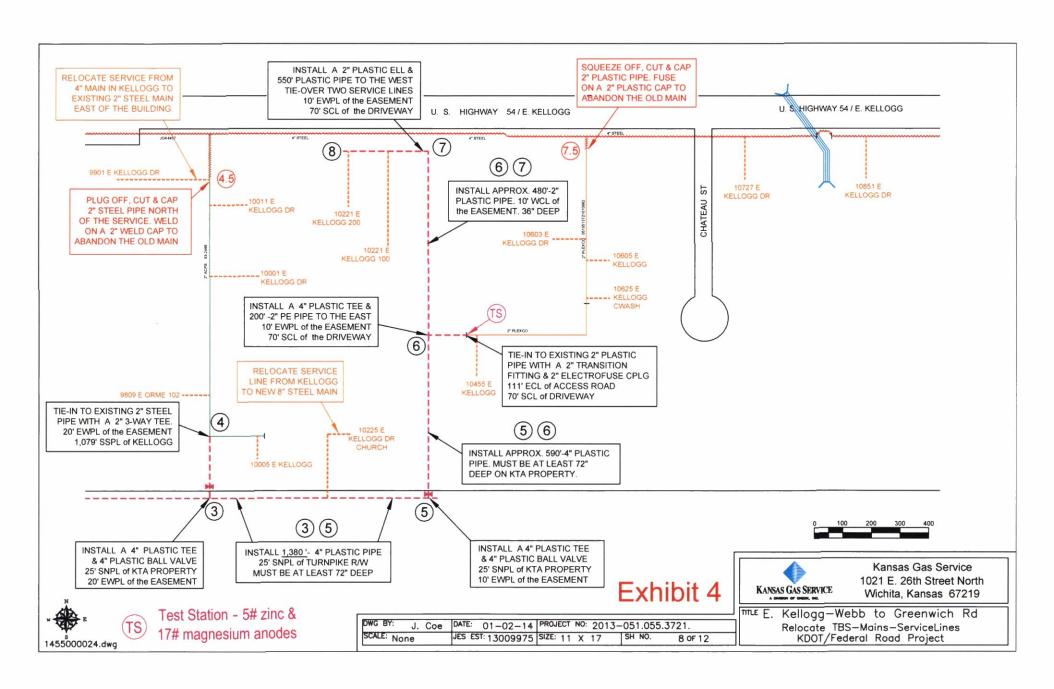
 DWG BY:
 J. Coe
 DATE:
 01-02-14
 PROJECT NO:
 2013-051.055.3721.

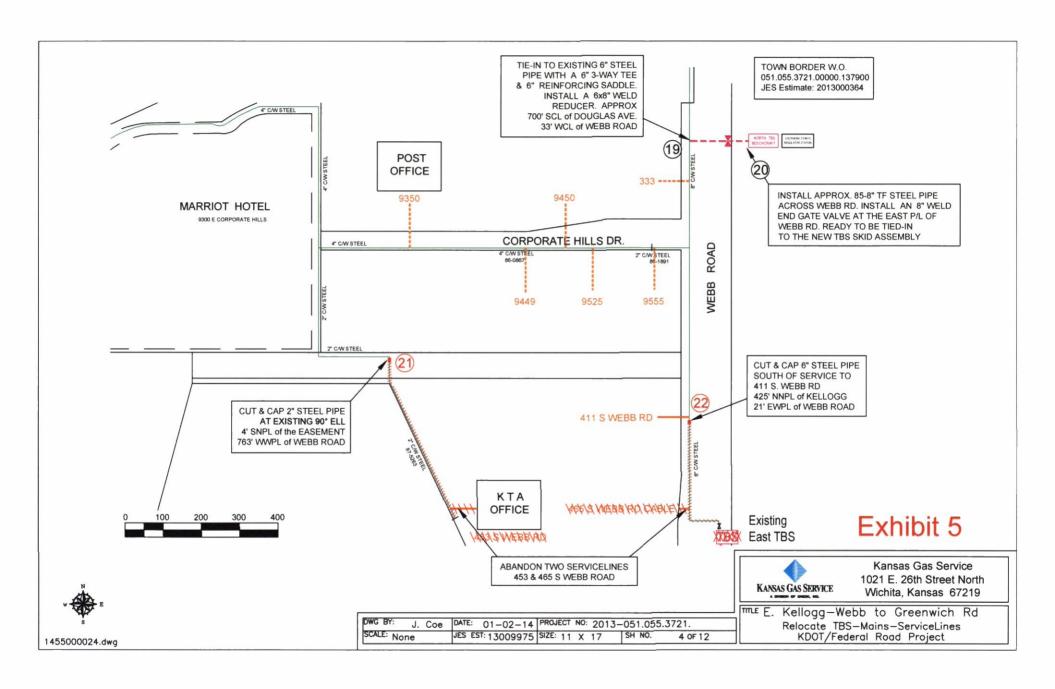
 SCALE:
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 JES EST:
 13009975
 SIZE:
 11 X 17
 SH NO.
 2 0F12

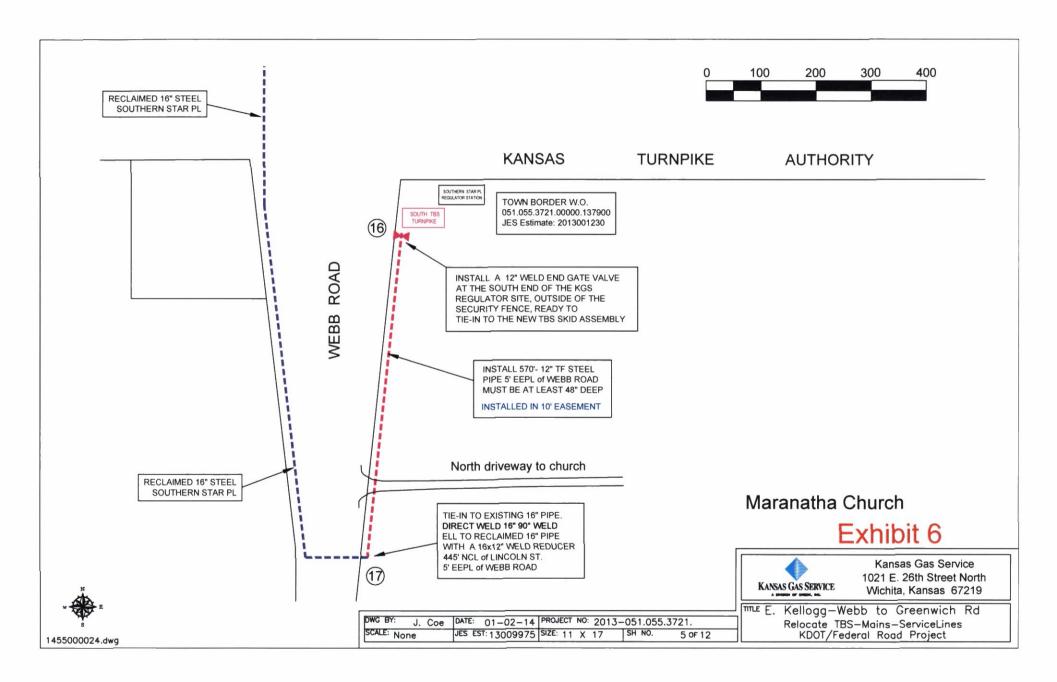
mle E. Kellogg-Webb to Greenwich Rd Relocate TBS-Mains-ServiceLines KDOT/Federal Road Project

1455000024.dwg









City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: Change Order No. 1 for 29th Street North, Ridge to Hoover (Districts V and VI)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendations: Approve the change order.

<u>Background:</u> On March 4, 2014, the City Council approved a construction contract with Cornejo & Sons in the amount of \$2,901,241 for improvements to 29th Street North, between Ridge and Hoover. Construction began in March 2014.

<u>Analysis:</u> The existing storm water drainage system at the northwest corner of 29th and Ridge was found to be at a higher elevation than indicated on the construction plans. Record information used during the design phase was inaccurate. In order to achieve positive drainage for the proposed system, a portion of the existing pipe must be removed and installed at the proper elevation and two new manhole structures must be installed. Existing pipe will be reused as much as possible in an effort to reduce extra costs. A change order has been prepared to authorize these revisions. The contract completion time is not affected by this change. Final quantity adjustments will be made as needed based on final measurements.

Financial Considerations: The cost of the additional work is \$32,757, which brings the contract total to \$2,933,998. This change order represents 1.1% of the original contract amount, which is within the 25% of contract cost limit set by City Council policy. Funding is available within the existing budget, which was approved by the City Council on January 7, 2014, and is funded by General Obligation bonds.

<u>Legal Considerations:</u> The Law Department has reviewed and approved the change order as to form. The change order amount is within the 25% of contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve the change order and authorize the necessary signatures.

Attachments: Change Order No. 1.



May 19, 2014

CHANGE ORDER

To: Cornejo & Sons, LLC **Project:** 29th St. N., Ridge to Hoover **Change Order No.:** 1 **Project No.:** 472-84691/448-90545

 Purchase Order No.: PO440222
 OCA No.: 706989/635703

 CHARGE TO OCA No.: 706989
 PPN: 208454/761749

Please perform the following extra work at a cost not to exceed \$32,757.00

Work for this Change Order cannot be completed until approved by all. Contractor should expect approximately 3 weeks for approval.

Additional Work: Revise the storm water system at Ridge Road.

Reason for Additional Work: The existing storm water system at the northwest corner of 29th N. and Ridge Road is a higher elevation than indicated on the plans. Record information on the storm sewer is not accurate. In order to achieve positive drainage on the new system, contractor must remove and reinstall 121' of elliptical pipe, and install two new manhole structures. Contractor will salvage as much elliptical pipe as possible for re-use. Final adjustment to quantities and budget charges will be made based on length of pipe salvaged.

		1	negonated/			
Line#	KDOT	'# Item	Bid	Qty	Unit Price	Extension
NEW	N.A.	Storm Sewer Line 1AB	Negot'd	1 LS	\$33,057.00	\$33,057.00
NEW	N.A.	Cost reduction to reuse existing pipe	e Negot'd	10 lf	(\$30.00)	(\$300.00)

Total \$32,757.00

CIP Budget Amount: Consultant: Baughman Exp. & Encum. To Date: CO Amount: Unencum. Bal. After CO:	\$4,105,000.00 (706989) \$74,300.00 (635703) \$3,474,943.43 \$32,757.00 \$597,299.57	Original Contract Amt.: Current CO Amt.: Amt. of Previous CO's: Total of All CO's: % of Orig. Contract / 25% Mandjusted Contract Amt.:	\$2,901,241.42 \$32,757.00 \$0.00 \$32,757.00 ax.: 1.12% \$2,933,998.42	
Recommended By: G. Baalman		Approved:		
Steve Degenhardt, P.E. Construction Division Manager	Date	Gary Janzen, P.E. City Engineer	Date	
Approved:		Approved		
Contractor	Date	Alan King Director of Public Works & U	Date tilities	
Approved as to Form:		By Order of the City Council:		
Gary Rebenstorf	 Date	Carl Brewer	Date	

Director of Law Mayor

Attest:____

City Clerk

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: Purchase Option (Presbyterian Manors, Inc.) (District I)

INITIATED BY: Office of Urban Development

AGENDA: Consent

Recommendations: Adopt the Resolution and authorize the necessary signatures.

Background: On May 1, 1990, the City of Wichita issued Industrial Revenue Bonds (IRBs) in an amount of \$675,000 on behalf of Presbyterian Manors, Inc. for the acquisition of a site and the construction and equipping of a new corporate headquarters located at 6525 E. Mainsgate, near 21st Street North and Woodlawn.

The City received notice from Presbyterian Manors, Inc. of its intention to exercise the IRB purchase option and requests approval of the conveyance of the IRB-financed property. The bonds have matured.

<u>Analysis</u>: Under the provisions of the IRB Lease between Presbyterian Manors, Inc. ("Tenant") and the City, the Tenant has the option, if all outstanding bonds and fees have been paid, to purchase the facilities from the City of Wichita for the sum of \$100. The Tenant has made final payment on the bonds which has been confirmed by the trustee.

<u>Financial Considerations</u>: The City has received payment of the \$100 purchase option price required by the Lease Agreement. There are no fiscal impacts to the City as a result of the purchase option.

<u>Legal Considerations</u>: The City is required to convey the IRB Project property to the Tenant once all the conditions established in the Lease have been met. The Resolution authorizing execution of the Bill of Sale, Special Warranty Deed and Release of Lease Agreement, and the delivery of such documents have been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council adopt the Resolution approving the Special Warranty Deed, Bill of Sale, Release of Lease Agreement and to convey the property to Presbyterian Manors, Inc. and authorize the necessary signatures.

<u>Attachment(s)</u>: Exercise of Option to Purchase (Resolution, Special Warranty Deed, Bill of Sale, Release of Lease)

RESOLUTION NO. 14-159

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS AUTHORIZING THE SALE AND CONVEYANCE OF CERTAIN PROPERTY TO PRESBYTERIAN MANORS, INC.

WHEREAS, pursuant to the Trust Indenture dated as of May 1, 1990, the City of Wichita, Kansas (the "Issuer") has previously issued its Industrial Revenue Bonds, Series III, 1990 (Presbyterian Manors, Inc.) in the original aggregate principal amount of \$675,000 (the "Bonds") to finance the cost of acquiring a site and constructing, equipping and installing a corporate headquarters (the "Project"), such Project having been leased to Presbyterian Manors, Inc., a Kansas not-for-profit corporation (the "Tenant") pursuant to a Lease dated as of May 1, 1990 between the City and the Tenant (the "Lease"); and

WHEREAS, the Tenant desires to exercise its option to purchase the Project under Section 17.1 of the Lease and is not in default under the Lease; and

WHEREAS, the Tenant had made all the payments of Basic Rent and Additional Rent pursuant to the Lease and all principal and interest on the Bonds has been paid or payment has been provided for; and

WHEREAS, The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri, as successor trustee for the Bonds, has certified that no Bonds remain outstanding; and

WHEREAS, the Tenant has provided the City written notice of its intent to exercise its option to purchase the Project;

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. The Mayor and Clerk are authorized and directed to execute and deliver to the Tenant a special warranty deed substantially in the form set forth on *Exhibit A* attached hereto and a bill of sale substantially in the form set forth in *Exhibit B* attached hereto, transferring title to the Project to the Tenant. The Mayor and Clerk are hereby further authorized and directed to execute a Release of Lease, substantially in the form attached hereto as *Exhibit C*, and deliver same to the Tenant.

Section 2. The Mayor and Clerk are hereby further authorized and directed to sign such other instruments and certificates as shall be necessary and desirable in connection with this Resolution, and are hereby further authorized to take such further actions as may be necessary to accomplish the purposes of this Resolution.

[BALANCE OF THIS PAGE LEFT BLANK INTENTIONALLY]

ADOPTED by the governing body of the City of Wichita, Kansas on June 10, 2014.

CITY OF WICHITA, KANSAS

	Mayor
[SEAL]	
Attest:	
By:	
Clerk	
APPROVED AS TO FORM:	
Gary E. Rebenstorf, Director of Law	

EXHIBIT A

FORM OF SPECIAL WARRANTY DEED

THIS CONVEYANCE IS FOR THE PURPOSE OF RELEASING SECURITY FOR A DEBT OR OTHER OBLIGATION AND IS EXEMPT FROM THE REQUIREMENTS OF A SALES VALIDATION QUESTIONNAIRE PURSUANT TO K.S.A. 79-1437e(2).

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, made as of June 10, 2014 between the City of Wichita, Kansas, a municipal corporation, as Grantor, and Presbyterian Manors, Inc., a Kansas not-for-profit corporation, as Grantee;

WITNESSETH, that said Grantor, in furtherance of the terms of a certain Lease dated as of May 1, 1990 between Grantor and Grantee (the "Lease"), and as authorized by a Resolution duly adopted by the governing body of the Grantor, and by these presents does hereby convey to Grantee, its successors and assigns, all the following described real estate in Sedgwick County, Kansas:

Lot 5, except the South 70 feet thereof, Comotara Villages, an Addition to Wichita, Sedgwick County, Kansas;

for the sum of \$100.00 and other valuable consideration;

TO HAVE AND TO HOLD, the premises described, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in any way appertaining, to Grantee and to its successors and assigns forever; and Grantor hereby covenants that the premises are free and clear of all encumbrances whatsoever, except (a) permitted encumbrances, including the restriction that no existing building nor any building which is constructed or placed upon the land, either temporarily or permanently, shall be used for the purpose of housing any multigame, casino-style gambling on the premises, (b) those to which title was subject on the date of conveyance to the Issuer of the land, or to which title became subject with the Tenant's written consent, or which resulted from any failure of the Tenant to perform any of its covenants or obligations under the Lease, (c) taxes and assessments, general and special, if any, and (d) the rights of any party having condemned or who is attempting to condemn title to, or the use for a limited period of, all or any part of the Project; and that it will warrant and defend the title to the premises to Grantee and Grantee's successors and assigns forever against the lawful claims and demands of anyone claiming by, through or under it.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Grantor has executed this deed and affixed its corporate seal as of the day and year first above written.

[SEAL]	a municipal corporation
ATTEST:	Carl Brewer, Mayor
Karen Sublett, City Clerk	
	ACKNOWLEDGMENT
STATE OF KANSAS COUNTY OF SEDGWICK)) SS:)
	ras acknowledged before me this day of June, 2014 by Carl City Clerk, respectively, of the City of Wichita, Kansas, on behalf of
[SEAL]	Notary Public
My appointment expires:	

EXHIBIT B

FORM OF BILL OF SALE

BILL OF SALE

In furtherance of the terms of a certain Lease dated as of May 1, 1990 between the City of Wichita, Kansas, as Assignor, and Presbyterian Manors, Inc., a Kansas not-for-profit corporation, as Assignee, and for valuable consideration, Assignor hereby transfers, assigns and conveys to Assignee, all personal property purchased with the proceeds of the City of Wichita, Kansas, Industrial Revenue Bonds, Series III, 1990 (Presbyterian Manors, Inc.).

[SEAL]	
ATTEST:	CITY OF WICHITA, KANSAS a municipal corporation
Karen Sublett, City Clerk	Carl Brewer, Mayor
	ACKNOWLEDGMENT
STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:)
	s acknowledged before me this day of June, 2014, by Carl ty Clerk, respectively, of the City of Wichita, Kansas, on behalf of
[SEAL]	
	Notary Public
My appointment expires:	

EXHIBIT C

FORM OF RELEASE OF LEASE

RELEASE OF LEASE

WHEREAS, the City of Wichita, Kansas (the "Issuer") has heretofore entered into a Lease dated as of May 1, 1990 (the "Lease") between the Issuer and Presbyterian Manors, Inc., a Kansas not-for-profit corporation (the "Tenant"), notice of which is recorded on Film 1110 at Page 1455 in the office of the Sedgwick County Register of Deeds; and

WHEREAS, the Issuer assigned its interest in the Lease to The Bank of New York Mellon Trust Company, N.A., St. Louis, Missouri, acting as successor trustee (the "Trustee") for the Issuer and others for purpose of enforcement of the Tenant's covenants under the Lease; and

WHEREAS, the Tenant has exercised its option to purchase the facility described in the Lease from the Issuer; and

WHEREAS, all of the Tenant's obligations to the Issuer under the Lease have been satisfied;

THEREFORE, the property described in the attached Schedule I is hereby released from any claim of the Issuer and the Trustee under the Lease as of June 10, 2014.

[BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Release of Lease as of the date above written.

[SEAL]	CITY OF WICHITA, KANSAS a municipal corporation
ATTEST:	Carl Brewer, Mayor
Karen Sublett, City Clerk	-
	ACKNOWLEDGMENT
STATE OF KANSAS COUNTY OF SEDGWICK)) SS:)
	vas acknowledged before me this day of June, 2014 by Carl City Clerk, respectively, of the City of Wichita, Kansas, on behalf of
[SEAL]	Notary Public
My appointment expires:	

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

St. Louis, Missouri

[SEAL]	
[SLAL]	By:
	Name:
	Title:
CTLATE OF MICCOLDI	
STATE OF MISSOURI) SS: COUNTY OF)	
COUNTY OF)	
This instrument was acknowle	lged before me this day of June, 2014 by
as	of the The Bank of New York Mellon Trust Company, N.A., S
Louis, Missouri, a national banking ass	ociation or corporation.
[SEAL]	
	Notary Public
My appointment expires:	
7 - 11 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 -	Date

SCHEDULE I

PROPERTY SUBJECT TO LEASE

(a) The following described real estate located in Sedgwick County, Kansas, to wit:

Lot 5, except the South 70 feet thereof, Comotara Villages, an Addition to Wichita, Sedgwick County, Kansas;

said real property constituting the "Land" as referred to in said Lease.

(b) All buildings, improvements, machinery and equipment now or hereafter constructed, located or installed on the Land pursuant to said Lease, constituting the "Improvements" as referred to in said Lease, together with any substitutions or replacements therefor any "Project Additions" as referred to in said Lease, and more specifically described as follows:

A, 8,600 square foot office building to house the corporate headquarters and administrative offices of the Tenant:

the Land and Improvements described in paragraphs (a) and (b) of this Schedule I together constituting the "Project" as referred to in said Lease.

TRUSTEE'S CERTIFICATION

Re:

Re:	City of Wichita, Kansas	
	Industrial Revenue Bonds, Sen	ries III, 1990
	(Presbyterian Manors, Inc.) (th	ne "Bonds")
	The undersigned, on behalf o	f The Bank of New York Mellon Trust Company, N.A., St.
Louis.	•	(the "Trustee") with respect to the referenced Bonds, hereby
		Bonds remain outstanding under the Trust Indenture dated
		ng the Bonds, and all fees and expenses of the Trustee in
•	ction with such Bonds have bee	
		F
Dated	:, 2014	
		THE BANK OF NEW YORK MELLON
		TRUST COMPANY, N.A., as Trustee
		St. Louis, Missouri
		2 · 2 · 2 · 2 · 2 · 2 · 2 · 2 · 2 · 2 ·
[SEA]	Li	
	•	By:
		Name:
		Title:

CONTRACTS & AGREEMENTS BLANKET PURCHASE ORDERS RENEWAL OPTIONS MAY 2014

<u> </u>		INAL ZVIT			r
COMMODITY TITLE	EXPIRATION	VENDOR NAME	DEPARTMENT	ORIGINAL	RENEWAL OPTIONS
COMMODITY ITTLE	DATE	VENDOR NAME	DEPARIMENT	CONTRACT DATES	REMAINING
Ammunition, 9mm	5/31/2015	Accuracy, Inc. dba Ultramax Ammunition	Police	6/1/2012 - 5/31/2013	Last option
Animal Health Services	5/31/2014	Veterinary Services Group LLC, DBA Veterinary	Police	6/1/2012 - 5/31/2013	Annual basis
		Emergency and Specialty Hospital of Wichita			
Boots, 12" Leather Wellington	5/31/2014	Vanderbilts No. 3 Inc.	Police	2/1/2011 - 1/31/2012	Last option
Boots & Shoes - Police Department - Group 1	5/31/2014	Baysinger Police Supply, Inc.	Police	12/1/2010 - 11/30/2011	Last option
Boots & Shoes - Police Department - Group 2 and Group 3	5/31/2014	Galls, Inc., an Aramark company (Aramark Uniform Services, a division of Aramark Uniform & Career Apparel, LLC)	Police	12/1/2010 - 11/30/2011	Last option
Bricks	5/31/2015	Acme Brick Co.	Public Works & Utilities	6/6/2012 - 5/31/2013	Last option
Brooks Landfill - Class 1 Emission Source Operating Permit & Mandatory Greenhouse Gases Annual Reporting Requirements	5/31/2014	Camp Dresser & McKee	Public Works & Utilities	6/22/2010 - 5/31/2012	Last option
Catering and/or Concessions Services at Century II	5/31/2014	Premier Food Services, Inc.dba Premier Catering	City Manager	5/14/2013 - 5/30/2014	4 - 1 year options
Janitorial Services for Animal Control Facility - Group 5	5/31/2014	AAA Commercial Janitorial	Public Works & Utilities	6/1/2011 - 5/31/2012	Last option
Janitorial Services for Central Public Library-Group 1, Outside Park Restrooms - Group 3, Park Community Facilities - Group 8	5/31/2014	Wilson Building Maintenance Inc.	Public Works & Utilities	6/1/2011 - 5/31/2012	Last option
Janitorial Services for Environmental Services - Group 2 and Athletic Field Restrooms - Group 4	5/31/2014	EH Technical Solutions, Inc.	Public Works & Utilities	6/1/2011 - 5/31/2012	Last option
Janitorial Services for Old Town Restrooms, Old Town Parking Garage and the Water Walk Parking Garage & Restrooms - Group 7	5/31/2014	Able Janitorial, Inc.	Public Works & Utilities	5/1/2012 - 5/31/2013	Last option
Joint & Crack Sealant	5/31/2015	Paving Maintenance Supply Inc.	Public Works & Utilities	6/4/2013 - 5/31/2014	1 - 1 year option
Landscape Maintenance - Transit	5/31/2015	Complete Landscaping Systems, Inc.	Wichita Transit	6/1/2013 - 5/31/2014	1 - 1 year option
Landscape Maintenance for North and South Police Substations	5/31/2015	Travis Davis	Police	6/21/2012 - 5/31/2013	Last option
Liquid Sulfur Dioxide	5/31/2015	Brenntag Southwest, Inc.	Public Works & Utilities	6/1/2013 - 5/31/2014	1 - 1 year option
Manhole & & Inlet Frames & Covers (Stormwater), Groups 1 & 3	5/31/2014	Deeter Foundry, Inc.	Public Works & Utilities	6/12/2012 - 5/31/2013	1 - 1 year option
Manhole & Inlet Frames and Covers (Stormwater) Group 2	5/31/2014	Wichita Winwater Works Company	Public Works & Utilities	6/12/2012 - 5/31/2013	1 - 1 year option
Meter Boxes - 21" & 30" Meter Boxes - Group 3	5/31/2015	HD Supply Waterworks, Ltd.	Public Works & Utilities	6/11/2013 - 5/31/2014	1 - 1 year option
Meter Boxes - 2" Custom Setters - Group 1 and 20" Monitor Covers - Group 2	5/31/2015	Wichita Wirnwater Works Company	Public Works & Utilities	6/11/2013 - 5/31/2014	1 - 1 year option
Mowing, Trimming, Edging & Maintenance at Tri- State Central property located at 724 E. Osie	5/31/2015	Complete Landscaping Systems, Inc.	Public Works & Utilities	6/1/2013 - 5/31/2014	1 - 1 year option
MRI (Magnetic Resonance Imaging Services)	5/31/2015	Heartland Open MRI LLC dba AMI Allied Medical Imaging	Finance	6/1/2013 - 5/31/2014	3 - 1 year options
Nuisance Code Wrecker Services	5/31/2014	Arrow Wrecker Service, Inc.	Metropolitan Area Building and Construction (MABCD)	6/1/2012 - 5/31/2013	1 - 1 year option
Overhead Door Repair	5/31/2015	Ark Valley Door Company	Various	6/11/2013 - 5/31/2014	1 - 1 year option
Rock Salt for Snow and Ice Control	5/31/2014	Hutchinson Salt Company	Public Works & Utilities	6/21/2011 - 5/31/2012	Last option

Salt & Sand Mixture and Sand Only for Ice Control	5/31/2014	Comejo Materials, LLC	Public Works & Utilities	6/21/2011 - 5/31/2012	Last option
Translation and Interpreter Services	5/31/2015	Monica Salmeron DBA Foreign Language Interpreter Services	Municipal Court	6/1/2012 - 5/31/2013	2 - 1 year options
Tree Trimming, Pruning & Removal Service	5/31/2014	Arbor Masters Tree Service, Inc.	Housing & Community Services	6/1/2011 - 5/31/2012	Last option
Uniform Shirts & Pants for Police & Airport - Group 6, 8	5/31/2014	Baysinger Police Supply, Inc.	Police & Airport	6/1/2012 - 5/31/2013	1 - 1 year option
Uniform Shirts & Pants for Police & Airport - Groups 1, 2, 3, 4 & 9	5/31/2014	Quickstitch Alterations Inc.	Police & Airport	6/1/2012 - 5/31/2013	1 - 1 year option
Uniform Shirts & Pants for Police & Airport - Groups 5 & 7	5/31/2014	Industrial Uniform Co., LLC DBA Logo Depot	Police & Airport	6/1/2012 - 5/31/2013	1 - 1 year option
Water Utility Service Lines (Installation of)	5/31/2015	Mies Construction, Inc.	Public Works & Utilities	6/4/2013 - 5/31/2014	1 - 1 year option
Window Cleaning Services - Airport	5/31/2015	EH Technical Solutions, Inc.	Airport	6/1/2013 - 5/31/2014	1 - 1 year option

PROFESSIONAL CONTRACTS UNDER \$25,000 MAY 2014

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT	
				_

ANNUAL MAINTENANCE CONTRACTS OVER \$25,000 DIRECT PURCHASE ORDERS FOR MAY 2014

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT	
Lucity Inc.	DP440319	Software Maintenance/Support	\$32,935.00	
Avail Technologies Inc.	DP440350	ITS System Support Services	\$47,972.00	



DEPARTMENT OF LAW INTEROFFICE MEMORANDUM

TO: Karen Sublett, City Clerk

FROM: Gary E. Rebenstorf, Director of Law

SUBJECT: Report on Claims for April 2014

DATE: May 7, 2014

The following claims were approved by the Law Department during the month of April 2014.

Kansas Gas Service \$792.09

cc: Robert Layton, City Manager

Shawn Henning, Director of Finance

^{*}City Manager Approval

^{**} Settled for lesser amount than claimed

^{***}Settled for more than amount claimed

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: Public Art Maintenance Contract (All Districts)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the contract between the City of Wichita (City) and Gotta Corporation for the maintenance of the City's Public Art Collection in an amount not to exceed \$50,000 annually.

Background: The 2014 budget provides funds to clean and maintain the various pieces of art in the City's Public Art Collection. This allocation represents the City's programmed funds for the routine cleaning and maintenance of various sculptures and constructed artworks throughout the City.

On February 3, 2014, a Request for Proposal was issued seeking qualified firms to perform this specialized work. Two firms submitted proposals and were interviewed on April 4, 2014. The firm, Gotta Corporation, is the recommended business to perform this contract work based on the experience this firm has demonstrated in cleaning and maintaining public art.

<u>Analysis:</u> The contract outlines the expectations for cleaning and maintenance of the Public Art Collection, including:

- Visual inspection of the entire collection annually;
- Cleaning of at least one third of the entire collection annually;
- Submission of condition reports for all pieces in the collection before year-end which
 include a description of the artwork, identification of environmental elements that may
 affect or cause possible damage to the artwork and an assessment of the integrity of the
 sculpture and sculpture's base; and
- Photographs of any artwork that may need additional attention or repair beyond standard cleaning.

<u>Financial Considerations</u>: The Arts and Cultural Services budget allocation for 2014 includes \$50,000 for this work. The recommended contract is an annual contract with the option to renew four times. Any additional work not deemed to be part of the annual cleaning and maintenance will be billed at a cost of \$55 per hour plus expenses.

<u>Legal Consideration:</u> The Law Department has reviewed the contract as to form.

Recommendations/Actions: It is recommended that the City Council approve the contract between the City and Gotta Corporation not to exceed \$50,000 annually.

Attachment: Contract for Public Art Maintenance

CONTRACT

for

PUBLIC ARTS MAINTENANCE PROJECT BLANKET PURCHASE ORDER BP440033

THIS CONTRACT entered into this 10th day of June, 2014, by and between the CITY OF WICHITA, KANSAS, a municipal corporation, hereinafter called "CITY", and GOTTA CORPORATION (Vendor Code Number 809998-001), 125 S. Clifton Avenue, Wichita, KS 67218, Telephone Number (316) 519-6935, hereinafter called "CONTRACTOR".

WITNESSETH:

WHEREAS, the CITY has solicited proposals for Public Arts Maintenance Project for the City Manager's Office/Arts & Cultural Division (Formal Proposal – FP440002);

WHEREAS, CONTRACTOR has submitted the proposal most beneficial to the CITY and is ready, willing, and able to provide the commodities and/or services required by the CITY.

NOW, THEREFORE, the parties hereto agree as follows:

- 1. **Scope of Services. CONTRACTOR** shall provide to the **CITY** all those services specified in its response to Formal Proposal Number FP440002, which is incorporated herein by this reference the same as if it were fully set forth. The proposal package, including all specifications, plans and addenda, provided by the City of Wichita as part of the proposal letting process for Formal Proposal FP440002, shall be considered a part of this contract and is incorporated by reference herein.
- 2. **Compensation. CITY** agrees to pay to **CONTRACTOR** an annual cost for the Public Arts Maintenance Project for the City Manager's Office / Arts & Cultural Division as per the proposal, plans, specifications, addenda and Contractor's proposal of February 18, 2014 and as approved by the City Council on June 10, 2014.

Labor, Materials and supplies:

\$50,000

Deposit (50% required)	\$25,000
Second payment upon completion	\$10,000
Of ½ cleaned	Ψ10,000
Third payment upon final ½ cleaned	\$10,000
Final payment due upon submission of	Ψ10,000
Condition reports	\$ 5,000

CONTRACT NOT TO EXCEED \$50,000

Additional sculpture cleaning and repair will be billed separately at \$59.00/hr + expenses per working order by City Staff.

Contractor agrees to provide written condition reports for ALL sculptures annually. A condition report is expected for works deemed to be in good condition and not requiring cleaning and Contractor will not need to provide photographs. Contractor will annually clean at LEAST one third of the entire collection and provide condition reports for those works. Sculptural works deemed to need additional attention will require a condition report as well as photographs. Additional work may be contracted by City Staff when additional funds become available on a per hourly rate + expenses.

Term. The term of this contract shall be from July 1, 2014 through June 3. 30, 2014 with an option to renew for four (4) successive one (1) year terms by mutual agreement of both parties. This contract is subject to cancellation by the CITY, at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to CONTRACTOR.

4. Indemnification and Insurance.

- a. CONTRACTOR shall save and hold the CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of CONTRACTOR, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.
- b. CONTRACTOR will carry insurance coverage during the term of this contract and any extensions thereof in the amounts and manner provided as follows:
- 1. Comprehensive General Liability Covering premises---operations, xcu hazards when applicable, Product/Completed Operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability \$500,000 Each Occurrence \$500,000 Each Aggregate

Property Damage Liability \$500,000 Each Occurrence \$500,000 Each Aggregate

Or

Bodily Injury and Property Damage \$500,000 Each Occurrence Liability (Combined Single Limit) \$500,000 Each Aggregate

Comprehensive Automobile Liability
 All Owned, Non-Owned, and Hired vehicles with minimum limits as follows:

Bodily Injury Liability Property Damage Liability

\$500,000 Each Accident \$500,000 Each Accident

Or

Bodily Injury and Property Damage Liability (Combined Single Limit)

\$500,000 Each Accident

3. Workers' Compensation

Statutory

Employers Liability

\$100,000 Each Accident \$500,000 Aggregate \$100,000 Occupational Disease

- 5. **Independent Contractor.** The relationship of the **CONTRACTOR** to the **CITY** will be that of an independent contractor. No employee or agent of the **CONTRACTOR** shall be considered an employee of the **CITY**.
- 6. **Compliance with Laws. CONTRACTOR** shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this Contract.
- 7. **No Assignment.** The services to be provided by the **CONTRACTOR** under this Contract are personal and cannot be assigned, sublet or transferred without the specific written consent of the **CITY**.
- 8. **Non-Discrimination. CONTRACTOR** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment/ Affirmative Action Program Requirements Statement for Contracts or Agreements attached hereto as Exhibit A.
- 9. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of any part of this Contract to create the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a party to this Contract to maintain a suit for damages pursuant to the terms or provisions of this Contract.
- 10. **No Arbitration**. The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

- 11. **Governing Law.** This contract shall be interpreted according to the laws of the State of Kansas. The parties agree that this contract has been created in Kansas.
- 12. **Representative's Authority to Contract.** By signing this contract, the representative of the contractor or **CONTRACTOR** represents the he or she is duly authorized by the contractor or **CONTRACTOR** to execute this contract, and that the contractor or **CONTRACTOR** has agreed to be bound by all its provisions.

IN WITNESS WHEREOF, the parties have set their hands the day and year first above written.

ATTEST:	CITY OF WICHITA, KANSAS
Janis Edwards Deputy City Clerk	Carl Brewer Mayor
APPROVED AS TO FORM:	GOTTA CORPORATION
Gary E. Rebenstorf Director of Law	Signature JASON LONGRAM Print Signature Name
	President or Corporate Officer)

EXHIBIT A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, Contractor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, Contractor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

- 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or Contractor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
 - 1. The Contractor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
 - 2. The Contractor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the Contractor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
 - 3. The Contractor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination Equal Employment Opportunity Requirements. If the Contractor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the Contractor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
 - 4. The Contractor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subcontractor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

- 1. Those contractors, subcontractors, Contractors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
- 2. Those Contractors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, Contractor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

City of Wichita City Council Meeting June 10, 2014

To: Mayor and City Council

Subject: Long Range Transportation Plan Project/Program Solicitation Consultant Contract

Initiated By: Wichita Area Metropolitan Planning Organization (WAMPO)

Agenda: City Council (Consent)

Recommendation: As WAMPO's fiscal agent, approve the contract for the Long Range Transportation Plan Project/Program Solicitation consulting services and authorize the necessary signatures..

<u>Background:</u> The WAMPO governing body, the Transportation Policy Body (TPB), approved this consultant project as part of WAMPO's 2014 Unified Planning Work Program Amendment #1 on February 11, 2014. Procurement of these services followed the City of Wichita's process. Two proposals were received in response to the Request for Proposals. The consultant selection committee selected Parsons Brinckerhoff, Inc., based on the scope and quality of the services offered.

<u>Analysis:</u> The Long Range Transportation Plan Project/Program Solicitation will provide WAMPO with the methodology and tools for selecting and ranking projects and programs to be included in the long range transportation plan

<u>Financial Consideration:</u> WAMPO has budgeted the \$83,243.69 required for this contract. As WAMPO's fiscal agent, the City of Wichita will front the payments to the consultant, as scheduled in the contract, and will be reimbursed through WAMPO's Federal Consolidated Planning Grant.

<u>Legal Consideration:</u> WAMPO's legal counsel and the City's Law Department have reviewed and approved the contract as to form.

Recommendation/Actions: It is recommended that the City Council, as the fiscal agent for the WAMPO, approve the contract to complete the Long Range Transportation Plan Project/Program Solicitation consulting services and authorize the necessary signatures.

<u>Attachment:</u> Consultant contract

AGREEMENT FOR PROFESSIONAL SERVICES

Long Range Transportation Project Program/Project Selection Consultant Agreement

THIS AGREEMENT made and entered into this 10th day of June 2014, by and between the Wichita Area Metropolitan Planning Organization, (hereinafter referred to as "the Client"), and Parsons Brinckerhoff, (hereinafter referred to as "the Consultant").

WHEREAS, the Client wants to contract for services to support the development of a Long Range Transportation Plan Project/Program Solicitation, has publicly solicited proposals for the same, and the Consultant has presented the best combination of services and price from among the vendors presenting proposals. Therefore, the Client wishes to contract with the Consultant for those services. The Agreement is financed in part with funding from the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA). The services performed under any resulting agreement shall comply with all federal, state and the City of Wichita laws and regulations. In addition, this Agreement will be subject to the requirements of 49 CFR 18 and cost eligibility reimbursement will be subject to 48 CFR 31.2; and

WHEREAS, the Consultant has the knowledge, experience and expertise in transportation planning to undertake this Project on behalf of the Client; and

WHEREAS, the Client desires to retain the services of the Consultant to provide support in the development and completion of the Long Range Transportation Plan Project/Program Solicitation.

NOW, THEREFORE THE PARTIES AGREE AS FOLLOWS:

- **1. DESCRIPTION OF SERVICES**. The Consultant will provide the services and deliver the documents required to complete the Long Range Transportation Plan Project/Program Solicitation as outlined in the Scope of Services set forth in Exhibit C and as follows.
 - A. To make available during regular office hours, all calculations, maps, drawings, and all other appropriate forms of representation such as the Client may wish to examine periodically during performance of this Agreement.
 - **B.** To attend meetings with the Client and other local, state and federal agencies as necessitated by the Scope of Services as set forth in Exhibit C, which by this reference is incorporated and made a part of this Agreement.
 - C. To save and hold the Client harmless against all suits, claims, and losses arising from or caused by errors, omissions or negligent acts of the Consultant, its agents, servants, employees, or subcontractors occurring in the performance of its services under this Agreement.
 - **D.** To maintain books, documents, papers, accounting records, and other evidence pertaining to costs incurred by the Consultant and, where relevant to method of payment, to make such material available to the Client.
 - E. To comply with all federal, state, and local laws, ordinances, and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964.
 - **F.** To be responsible for the professional and technical accuracies and the coordination of all designs, maps and presentation, drawings, specifications, plans and/or other work or material furnished by the Consultant under this Agreement. The Consultant further agrees that all designs, drawings, specifications, plans, and other work or material furnished by the Consultant, its agents, employees and subcontractors, under this Agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.
- 2. PERFORMANCE OF SERVICES. The Consultant shall determine the manner in which its services hereunder are to be performed and the specific hours to be worked in performing such services; provided, the Consultant will provide requested services and delivered documents as agreed between the Client and the Consultant in Exhibit C.

3. PROMPT PAYMENT. The Client will compensate upon finding that services and deliverables provided by the Consultant are acceptable under the terms of the Agreement for the direct hours worked by the Consultant's employee(s) at the rates set forth in Exhibit D, Fee Schedule, which by this reference is incorporated and made a part of this Agreement. The Client will compensate the Consultant upon finding that costs are acceptable under the terms of the Agreement for material and other direct costs specified in the Scope of Services and for reasonable expenses, including travel, incurred as a direct result of the Consultant's performance of services. The actual cost shall be incurred in conformity with the cost principles established in 23 CFR 172 and 48 CFR et seq. Unless acceptable by the Client, the maximum cost not-to-exceed dollar amount for the compensation for services and expenses detailed in this Agreement is \$83,243.69. Final billing for the project including reimbursable expenses for the time they are productively engaged in work necessary to fulfill the terms of this Agreement must be submitted to the Client by March 31, 2015. During the progress of work covered by this Agreement, payments will be made to the Consultant at intervals of 30 days based on the statements provided by the Consultant itemizing the number of hours of work performed. the percentage of the services hereunder completed and in compliance with the Fee Schedule as set forth in Exhibit D, a copy of which is attached hereto and incorporated herein by reference. The Client will make payment within 30 calendar days of a reconciled and approved invoice reflecting deliverables as outlined by the scope of work. The Consultant will negotiate with the Client if there are any changes in deliverable dates. Furthermore, the Consultant shall make payment to any subconsultant(s) under contract on this project and shall (1) within ten (10) calendar days pay any subconsultant or subcontractor engaged by it for satisfactory performance of their contract obligations and (2) within fifteen (15) calendar days submit a completed "Prompt Payment by Prime Consultant" Form together with supporting documentation to WAMPO as verification that Parsons Brinckerhoff has, in fact, promptly paid each sub-consultant or subcontractor. For any delay or postponement of payments to its sub-consultants or subcontractors hereunder. Parsons Brinckerhoff shall justify the delay or postponement by showing good cause for it, or rectify the failure to pay. If Parsons Brinckerhoff, within the fifteen (15) day period specified in subpart (2) above, either (a) cannot verify prompt payment or (b) cannot show good cause for any delay or postponement of payment, then WAMPO may withhold further payment to Parsons Brinckerhoff until such time the delay in payment is rectified. Parsons Brinckerhoff shall include in its contracts with sub-consultants and subcontractors (if any) the following or equivalent clause regarding prompt payment: "Within ten (10) calendar days of Parsons Brinckerhoff receipt of payment from WAMPO for satisfactory performance of its contract obligations, Parsons Brinckerhoff shall pay [sub-consultant or subcontractor name] for satisfactory performance of its subcontract obligations."

In addition, the Consultant agrees that:

- A. The reimbursement for the professional services required by this Agreement will be based on the Consultant's actual costs, which can be less than the estimated amount. If additional work should be necessary, the Client will negotiate with the Consultant if there are any changes in the deliverables. No additional work shall be performed nor shall additional compensation be paid except on the basis of a written Supplemental Agreement executed by the Client and the Consultant.
- **B.** The Client will inform the Consultant within 45 days of any dissatisfaction with deliverables or invoicing and will reimburse to the Consultant any withheld payment upon completion of the associated work effort to the Client's satisfaction.
- C. The Client may withhold reimbursement of payment at the end of each 30-day cycle in the situation where deliverables applicable to the invoiced amount are delayed by more than two weeks without the Client's approval. Any payment withheld will be proportional to a reasonable estimate of the work effort that may be delayed. Reimbursement will be made promptly upon completion of the associated services to the satisfaction of the Client. The Consultant will not be responsible or held liable for delays occasioned by the actions or inactions on the part of the Client or for other unavoidable delays beyond the control of the Consultant.

- D. At scheduled project meetings, the Consultant will review with the Client the Consultant's progress with regard to both completed and ongoing work efforts. Progress will be assessed with regard to the status of completion of deliverables that are ongoing and the Consultant's efforts to resolve issues that may affect schedule. Deliverables as identified within the Scope of Services will be discussed as well as any known project issues that may be beyond the control of the Consultant that could affect the schedule. The Client may withhold payment in part or in whole for services not completed or for which work progress is not proportional to the level of effort invoiced. Any withheld payment will be proportional to the effort deemed necessary to bring the associated tasks or deliverables up to the level of effort that has been invoiced.
- **4. CASH BASIS AND BUDGET LAWS**. The right of the Client to enter into this Agreement is subject to the provisions of the Kansas Cash Basis Law (K.S.A. 10-1112 and 10-1113), applicable Kansas budget laws (including K.S.A. 79-2935), and other applicable federal and state laws, rules and regulations.
- **5. LEGAL COMPLIANCE.** This Agreement shall be construed and interpreted so as to ensure that the Client shall at all times stay in conformity with all federal, state and local laws, rules, regulations, policies and procedures. As a condition of this Agreement the Client reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, this Agreement may be deemed to violate the terms of any such laws, rules, regulations, policies and procedures.
- **6. INDEMNIFICATION AGREEMENT**. The Consultant agrees to fully indemnify, defend, and hold harmless the Client, its officers, employees, and volunteers from any and all loss, damage, liability, claim, demand, or cause of action whatsoever to the extent arising out of or resulting from or alleged to have arisen out of or have resulted from any negligent act or omission or willful misconduct of the Consultant, its officers, employees, independent contractors, or representatives in the performance of this Agreement.
- 7. DISALLOWED COSTS. It is agreed and understood by and between the parties that any funds expended, obligations incurred, or services rendered by Consultant in violation of or contrary to any applicable federal laws, federal regulations, federal guidance, state laws, state regulations, applicable grant documents or the provisions of this Agreement are disallowable and as a result Client shall not issue payment or reimbursement for any such costs. In the event that such disallowable costs are deemed to have been paid or reimbursed by Client, Client shall upon written notification to Consultant require adjustment or repayment of such disallowed expenditures. Consultant shall make such adjustment or repayment within thirty (30) days from receipt of said notification. Funds declared to be provided for ineligible obligations incurred or services rendered shall be returned by the Consultant to the Client within thirty (30) days of determination and issuance of a notification for repayment. The Client may withhold any payments to the Consultant for the purposes of set off until such time as any disallowed cost is repaid.
- 8. TERM/TERMINATION. This Agreement shall run for the life of the project effective the date of the final signature of this Agreement. This Agreement shall terminate upon the satisfactory completion by the Consultant of the services and documents required to be provided hereunder, or in whole or in part whenever, for any reason or no reason at all, the Client shall determine that termination of this Agreement is in its best interests. Any such termination for convenience shall in no way work to incur any liability for damages whatsoever. In the event that the Client elects to terminate this Agreement pursuant to this provision, it shall provide the Consultant written notice at least twenty (20) days prior to the termination date. The termination shall be effective as of the date specified in the notice. Upon receipt of such notice of termination, the Consultant shall discontinue and cause all such work to terminate upon the date specified in the notice from the Client. The Consultant shall continue to perform any part of the work that was not terminated by such notice. In the event of such termination, the Consultant will be paid to the date of termination for such work as has been properly performed hereunder, as determined by the Client. Any invoice for completed work must be submitted to the

Client within thirty (30) days after the effective date of termination. At the termination of this Agreement, information gathered or prepared by the Consultant in furtherance of this Agreement, including data, studies, surveys, records, drawings, maps and reports shall, at the option of the Client, become the property of the Client and be immediately turned over to the Client.

- **9. PROPRIETARY MATERIALS.** Upon termination of this Agreement, all data provided by the Client, and any new data collected by the Consultant under this Agreement will be returned to the Client. The Consultant agrees to not keep copies of the provided or collected data after termination of this Agreement for any other use, or transfer data to any other party without prior written approval from the Client.
- 10. RELATIONSHIP OF PARTIES. It is understood and agreed that the Consultant and any subconsultants or subcontractors are independent contractor(s) and not employee(s) of the Client. Neither the Consultant nor any agent, employee, sub-consultant or subcontractor of the Consultant shall be considered an employee of the Client for any purpose whatsoever. The Consultant agrees that it has or will secure at its own expense all personnel required in the performance of its duties and responsibilities under this Agreement. The Consultant agrees that the Consultant is responsible for all wages, taxes, workers' compensation, social security payments, and unemployment compensation associated with its employees, as well as all other benefits that accrue to said employees.
- **11. NOTICES.** All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficient if delivered in person or deposited in the United States mail, postage prepaid, and addressed as follows:

For the Client: Gloria J Jeff

WAMPO

455 North Main, 10th Floor Wichita, Kansas 67202

For the Consultant: Lisa Koch

Parsons Brinckerhoff

16201 W 95th St Suite 200

Lenexa, KS 66219

- **12. ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties hereto and there are no other promises or conditions in any other agreement, either oral or written. This Agreement supersedes any prior written or oral agreement between the parties hereto pertaining to the same subject matter.
- **13. AMENDMENT.** This Agreement may only be modified or amended if the modification or amendment is made in writing and signed by the Client and the Consultant.
- **14. SEVERABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds any provision of this Agreement is invalid or unenforceable, but by limiting the applicability of such provision the entire Agreement would be valid and enforceable, then such provision shall be deemed to be written, construed and enforced as limited.
- **15. NO WAIVER OF CONTRACTUAL RIGHTS.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. No provision of this Agreement may be waived unless such waiver is agreed to in writing and signed by both parties hereto.

- **16. APPLICABLE LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas. Venue shall lie in the Sedgwick County District Court.
- **17. ATTACHMENTS.** All exhibits, labeled Exhibit A through Exhibit G, to this Agreement are attached hereto and incorporated herein by reference.

Approved as to form:

IN WITNESS WHEREOF, the Consultant, Parsons Brinckerhoff, has executed this Contract and the Client, the Wichita Area Metropolitan Planning Organization, has caused this Contract to be signed by the Chairman and attested by the Secretary of its Transportation Policy Body on the day and year first above written.

Approved do to form	
By	
Gary E. Rebenstorf	Date
City Attorney, City of Wichita	
and 98 Pas	June 2, 2014
Austin K. Parker Attorney for the Wichita Area Metropolitan Planning Organization	Date
WICHITA AREA METROPOLITAN PLA	ININIO ONGANIZATION.
Tim Norton, WAMPO TPB Chairperson Transportation Policy Body Chairperson	Date
CITY OF WICHITA AS FISCAL AGENT	:
Carl Brewer	Date
City of Wichita Mayor	

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ATTEST:		
John Schlegel WAMPO Secretary	Date	
Parsons Brinckerhoff		
, Parsons Brinckerhoff	Date	

EXHIBIT A

REVISED NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this Agreement, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this Agreement, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:
 - The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination --Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
 - 2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration

for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;

- 3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present Agreement, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
- 4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.
- 5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
- D. Exempted from these requirements are:
 - 1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
 - 2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

EXHIBIT B

State of Kansas Department of Administration DA-146a (Rev. 06-12)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and

- made a part thereof, said contract being the __10th___ day of _____June_______, 2014____.

 1. **Terms Herein Controlling Provisions**: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment
- 2. Kansas Law and Venue: This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
- 3. Termination Due To Lack Of Funding Appropriation: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
- 4. Disclaimer Of Liability: No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
- 5. Anti-Discrimination Clause: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

- 6. Acceptance Of Contract: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
- 7. Arbitration, Damages, Warranties: Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

 8. Representative's Authority To Contract: By signing this contract, the representative of the contractor thereby represents
- that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
- 9. Responsibility For Taxes: The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

- 10. **Insurance**: The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
- 11. Information: No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
- 12. **The Eleventh Amendment**: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
- 13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

EXHIBIT C

Scope of Services

Task 1: Project Management

PB Project Manager Lisa Koch, AICP will work with the WAMPO project manager to finalize a scope, schedule and budget that is consistent with the requested activities. She will manage her team to make certain that all activities are completed to the satisfaction of the client. Principal in Charge Ed Tatem, PE, will contact the client project manager at frequent intervals during the project to check in on the projects progress and on client satisfaction.

To enable successful project delivery, project manager Lisa Koch, AICP will have invoice/progress meetings with the WAMPO project manager monthly through the duration of the project.

All project materials will be developed to be consistent with the WAMPO MOVE 2040 Style Manual.

Task 1 Schedule: Entire duration of Project (June 2014 – March 2015) *Task 1 Deliverables:* Scope, Schedule, Budget, Contracts, Invoices, and Progress Reports

Task 2: Database (Portal) Development

A key component of this contract is the development of a database (portal) to assist WAMPO partner municipalities in submitting projects for inclusion in the Long Range Transportation Plan. Parsons Brinckerhoff is excited to team with **Shockey Consulting Services**, a Kansas-based DBE Planning and Public Engagement Firm. Shockey Consulting, and their project lead, **Erin Ollig, AICP**, will lead this task and work with their subcontractor, **Kenn Yancy** on the development of a portal.

The portal will be a relational database that will allow municipalities and other WAMPO partners to insert information about their proposed projects into a secure database. Features of the portal will include:

- The portal will be located on an existing website hosted on a shared server. After the project is completed, WAMPO staff will work with Kenn Yancy on costs associated with running the site.
- All users will have a password that will be specific to their information. Unless the user has administrative rights, the user will not have access to other user's information.
- The "public-side" of the database will employ dropdown menus that will be specific based on the project-type (roadway, transit, bicycle/pedestrian, ITS, safety, planning, etc.). These will make project input easy and user-friendly.
- The "administrative" side will offer the ability to run standardized and custom reports based on the specific dropdown items.
- Once project solicitation and selection process is finalized, the projects can be housed on the
 website and be queried based on many project elements. The projects will also be integrated
 with Google Maps to enable remote project views.

Development of the portal will begin quickly upon notice to proceed. All meetings including the portal development team will be done in the Kansas City metropolitan area to reduce travel costs incurred to

the project. The portal will be finalized at least one week prior to opening day so that a test team can review the portal.

Task 2 Schedule: Development will occur in June 2014 Task 2 Deliverables: Database, Database Technical Report

Task 3: Project Solicitation Process

WAMPO staff is currently finalizing the evaluation framework through which projects will be evaluated. Before these projects can be evaluated, the Technical Advisory Committee and the Planning Advisory Committee must determine an investment strategy that will prioritize the measures used to evaluate projects. As part of Task 3, the PB team will work with WAMPO staff to analyze the information gathered from public and stakeholder input to provide a recommended investment strategy for the TAC and PAC's approval. This will include one in person meeting with WAMPO staff and up to 5 phone meetings and participation in the June 15th joint meeting.

After the portal has been beta tested and is ready to be opened for the public, the PB team will work with WAMPO staff to develop notification materials to all potential applicants (municipalities, transit agencies, KDOT) to inform them of the process for submitting projects. These materials will be based on PB team research regarding best practices regarding how to information partners of this type of work. This will include:

- Tutorial materials for using the portal
- Tutorial materials for identifying a "project" (what is a regionally significant project, what are the evaluation criteria, etc.)
- Information on deadlines and the project meetings.

The PB team will then work with WAMPO to develop the invitations, materials, locations and other necessary items for three information meetings for the potential applicants. In order to allow these meetings to be productive, WAMPO and PB staff will determine which potential applicants will participate in which meetings (for example – City of Wichita and Sedgwick County will have many projects to discuss, smaller towns will have fewer projects to discuss, so larger communities should be grouped together and have fewer communities in the room).

The format of the meeting will be a brief presentation that provides an overview on the MOVE 2040 process (by WAMPO staff), an overview of the project selection process (including information about what types of projects are included in the LRTP and the evaluation process), an introduction to the portal and a discussion about deadlines. The second half of the meeting will include breakout tables, with half of the tables housing computers with staff available to assist potential applicants with portal registration (and hands-on demonstration), and half the tables housing PB and WAMPO staff available to consult with applicants on their potential projects. The purpose of this consultation is to provide them feedback based on the evaluation methodology and to reduce the amount of questions to the consultant and WAMPO team members after the meeting.

Task 3 Schedule: June to end of August

Task 3 Deliverables: Project Solicitation Meeting invites, meeting notes, powerpoint presentation, handouts and other materials. Project Solicitation technical report

Page 12 of 30

Task 4: Project Evaluation

The Parsons Brinckerhoff technical team won't wait until the project solicitation process has ended to spring into action! We know what a process like this one takes because project manager and task lead **Lisa Koch, AICP** and her technical team has successfully completed similar projects! In the <u>5 County Regional Transportation Study</u> Lisa developed an evaluation methodology based on 9 objectives that were used to score <u>almost 200</u> multimodal projects in the 5 County Study area.

The technical team for this task will include:

Brian Geiger, **PE**, **PTOE**: Brian will gather and analyze all data related to traffic safety and traffic engineering. Brian has worked with the engineering staff at the City of Wichita and surrounding communities and will be able to work quickly to gather information needed for analysis. Brian will also maintain the scoring spreadsheets for all projects.

Andrew Coe: Andrew is an expert travel demand modeler in two platforms, TransCAD and EMME. He will be Parsons Brinckerhoff's liaison to the Travel Demand Modeling consultant and will conduct the evaluations based on the travel demand model outputs (mobility, air quality and other congestion factors). He has a master's degree in mathematics and will provide a QC analysis on calculations.

Jared Gulbranson: Jared will evaluate all transit projects and will conduct all GIS analysis related to projects. He will also provide any necessary economic development analysis for projects and other analysis as identified in the WAMPO performance measures. Jared will write the technical reports for the project evaluation.

The process:

Research Best Practices: The PB team will research best practices used by MPOs, DOTs and City CIP programs in developing project eligibility guidelines, project applications, project scoring criteria, project level analysis and project type categories.

Uniform Scoring of All Evaluation Criteria: Lisa will start working with WAMPO staff early on so that the technical team can hit the ground running once projects are submitted. Once there is consensus on the evaluation methodology, a uniform scoring mechanism must be determined. It is our understanding that the committees will have determined the evaluation items prior to signing of the contract, so we can work quickly with WAMPO staff to assign uniform scoring.

Development of the Scoring Spreadsheet: Technical team member Brian Geiger, under Lisa's leadership, will develop scoring spreadsheets using the evaluation items, the weighting of those items and the uniform scoring. Once this scoring spreadsheet is developed, it will be shared with WAMPO staff for their approval.

Data Collection: Technical team members (as described above) will work with WAMPO staff and other municipal partners, contractors and KDOT partners to collect existing data to be used to analyze projects. It is assumed that all data will come from existing sources.

Input the Candidate Projects: Once the project solicitation period has ended and we have received the go-ahead from WAMPO, we will enter the projects in the spreadsheet for their analysis.

Let the Scoring Begin: The process begins with the four team members commencing a strategy session, where we discuss the following items:

- Where are there overlaps in data where team members need to work together or succeed a measure to one person?
- o How can we most efficiently score these to allow for quick turnaround?
- o Are there any scoring challenges or projects where we need more information?
- Develop the schedule to make certain we meet client expectations.

The group then scores the projects. Fortunately, this group of four is a well-oiled machine who has worked together as a unit for many years. <u>Our success on the evaluation of projects in the 5-County Study is proof of the teamwork!</u>

Preview of Initial Results: Prior to the September 12th Plan Advisory Committee Meeting, we will have a meeting with WAMPO staff to provide information on preliminary results, which will be based on the work completed up that that point. This will include number of projects submitted, total dollar amounts, amount per categories, number of projects per category, and significant concerns and issues. Parsons Brinckerhoff will develop materials for that meeting.

Final Results: All results will be completed by prior to the September 22 Joint PAC and TAC Meeting. We will present information to a WAMPO staff meeting, in order to determine how to show the results and develop content for the September 22nd meeting.

Develop Technical Report: A Technical Report on the scoring process will be drafted in the month of September for staff review. A final draft will be completed prior to the December Deadline

Task 4 Schedule: Mid June to end of September

Task 4 Deliverables: Project Scoring database, project scoring technical reports, powerpoints and other handouts from PAC and TAC meetings.

Task 5: Environmental Justice Analysis

As part of this contract, WAMPO has asked that the selected consultant design an environmental justice (EJ) methodology for project selection and carry out that methodology. We recommend the following process:

- Develop a new set of EJ Regional Maps for the WAMPO area for all EJ population subgroups.
 The regional maps will be the "Community of Comparison" Maps. All census block groups that are either 50% or more of a certain EJ population subgroup <u>or</u> 10% more than the WAMPO regional community of comparison for that population subgroup would be considered an EJ affected community.
- 2. Once projects are submitted, they will be analyzed by reviewing the project area against the EJ maps and considering the project scope based on experience with similar projects and impacts (both positive and negative) to community cohesion, displacements and other issues. If there is an evaluation criterion that is inclusive of EJ, a score would be included there. Otherwise, feedback, such as EJ, floodplains, wetlands, other permitting needs, right-of-way issues, and

- other items that could impact the successful development of a project will be included in a non-score portion of the evaluation form.
- 3. Once the projects are selected and identified in multi-year bands, the PB team will provide specific reflections regarding the EJ affected communities within the project study area and potential strategies for reaching out to populations to provide the best opportunities for success with the project. If there are remaining resources in this task due to the ability to use existing GIS layers or maps, PB will develop additional technical methodology support for the WAMPO EJ process.

Task 5 Schedule: June to November 2014

Task 5 Deliverables: Environmental Justice Process Technical Report with new maps, evaluation of projects and strategies for selected projects.

Task 6: Project Documentation

The Parsons Brinckerhoff team plan to develop technical reports for the following items:

- Portal Development
- Project Solicitation
- Project Evaluation
- Environmental Justice

In addition, Parsons Brinckerhoff will provide content for the reader friendly version of MOVE 2040 as needed by WAMPO staff. We will provide photographs from Project Solicitation workshops.

Task 6 Schedule: June to December 2014

Task 6 Deliverables: Technical reports and content for the reader friendly version as described above

EXHIBIT D

Fee Schedule

			Edwin Tatum Lisa Koch	h Maggie Thompson-Doll		PARSONS BRINCKERHOFF Jared Gulbranson Brian Geiger		Andrew Coe Pam Seipp		Sheila Shockey Erin Ollig	Shockey Consulting Services Erin Ollig Sandy Kelly	es Kelly
		Base Rate Escalation 3% Overhead Subtotal Fee	PIC \$94.31 \$97.14 \$153.19 \$250.33 \$25.03	Project Manager Deputy Projec \$40.40 \$41.61 \$55.62 \$107.23 \$10.72	.02 28 25 25 53 15	ct Evaluation Project E 32.69 \$33.67 \$53.10 \$86.77 \$8.68	32.7 \$33.68 \$53.11 \$86.80 \$8.68	Valuation Project Administrator 31.94 32.90 534. 534.78 551.88 584. 584.78 58.48 58.48	.49 40 89 89		Admini	ative Suppor
Task	Subtask	Total Timeframe Lead	\$275.36	\$117.96	\$122.69	\$95.45	\$95.48	\$93.26	\$97.78	\$210	\$120	09\$
1 Project Management		June 14-March										
r. r. oject Management	Scope/Schedule/Budget PIC - Quality Control Checks			2					5			
	With Client Client Meetings Invoicing		,	30					'n	4	20	
2. Database Development	Database planning meetings	14-Jun Ollig (Shockey Consulting Services)		60						4	12	
	Review Computer application developed by Kenn Yancy			4							4	
3. Project Solicitation Process	Preferred Alternative Development Process with	June 14-Aug14 Doll										
	WAMPO Project solicitation planning			40	4						4	
	Solicitation material development and review			. 2	20						20	4
	dissemination and Q&A			4	4						10	
A Draint Evaluation	Project Solicitation Meetings	lina 4. Cant 14 Koch		30	30						30	
+. rroject Evaluation	Develop Analysis Tool Collect Data from Client			4 2		20	30	20				
				20		20	40	40				
5. Environmental Justice Analysis		June 14-Oct14 Koch		20		ş						
6. Project Documentation	Projects	Gulbranson		70		70						
	MOVES Meeting Attendance Report Preparation			20		40						
TOTAL Hours TOTAL Fee			4 \$1,101.44 \$:	242 \$28,545.72	58 \$7,115.88	100 \$9,544.63	90 \$8,592.80	60 \$5,595.39	10 \$977.82	8 \$1,680.00 \$12	100 \$12,000.00	\$240.00
2007	Trips to Wichita Pre Submittal Conference	2 Hotel Nights, 1 Room, Mileage to and from Lawrence Kansas	Kansas	\$600								
	August 25th Plan Advisory Committee	Mileage to and from Lawrence Kansas		\$150								
	September PAC and TAC presentations	2 meetings mileage to and from Lawrence Kansas		\$300								
	2 other MOVES Meeting											
Parsons Brinckerhoff	Lawrence, KS			\$300								
	Computer Portal	see tab for details	·s	5,100.00								
Shockey Consulting Services	Meeting Materials Pre Submittal Conference	2 Hotel Nights, 1 Room, Mileage to and from Olathe, Kansas	nsas	\$800 \$600								
Showey consuming services			,	00.000.00								
Totals												
Parsons Brinckerhoff	02 CTA 123	g										
- ia '	Directs 502,475.00 Total \$62,823.69	69 05										
Shockey Consulting Services		8										
- 6	Directs \$ 6,500.00 Total \$20,420.00	000										
Overall Total	Total \$83,243.69	69										

EXHIBIT E

CONTRACTOR ASSURANCE

Special Attachment No. 1 Sheet 1 of 4

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN
MINORITY POPULATIONS AND LOW INCOME POPULATIONS (1994), and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 State. 252), §504 of the Rehabilitation Act of 1973 (87 State. 3555) and the Americans with Disabilities Act of 1990 (42 USD 12101), the Age Discrimination Act of 1975 (42 USC 6101), the Regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such ACT, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively insure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following nine "Nondiscrimination Clauses".

CLARIFICATION

Where the term "consultant" appears in the following seven "Nondiscrimination Clauses," the term "consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the consultant, or the consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

(Revised 07-29-1999)

- (1) Compliance with Regulations: The consultant will comply with the Regulations of the Regulations of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23, and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) Nondiscrimination: The consultant, with regard to the work performed by the consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) Solicitations for Subcontractors, Including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the consultant for work to be performed under a subcontract including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the consultant of the consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.
- (4) Information and Reports: The consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary and the Transportation of the State of Kansas will be permitted access to the consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- (5) Employment: The consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- (6) Sanctions for Noncompliance: In the event of the consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the

(Revised 07-29-1999)

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State of Kansas may determine to be appropriate, including, but not limited to,

- (a) withholding of payments to the consultant under the contract until the contractor complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.
- (7) Disadvantaged Business Obligation
 - (a) Disadvantaged Businesses are defined in the Regulations, shall have a level playing field to compete fairly for contracts financed in whole or in part with Federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Federally-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- (8) Executive Order 12898
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation and use such information in complying with this Order.

(9) Incorporation of Provisions: The consultant will include the provisions of paragraph (1) through (8) in every subcontract, including procurements of materials and lease of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the consultant may request the State to enter into such litigation to protect the interests of the State.

(Revised 07-29-1999)

EXHIBIT F

07-18-80-R26 Sheet 1 of 7

REQUIRED CONTRACT PROVISION

FEDERAL AID CONTRACTS UTILIZATION OF DISADVANTAGED BUSINESSES

I. INTRODUCTION.

The specific requirements for the utilization of Disadvantaged Business Enterprises, hereinafter referred to as DBEs, are set forth in this Required Contract Provision and are imposed pursuant to 49 CFR Part 26, hereinafter referred to as the regulations. This provision meets or exceeds the regulatory requirements. The regulations always take precedence over normal industry practice.

A. ASSURANCE.

The Contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, religion, age, disability, income status, veteran status or gender in the performance of the Contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT assisted Contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract, or such other remedy as the Kansas Department of Transportation deems appropriate.

B. DEFINITIONS.

For the purpose of this Required Contract Provision, the following words and phrases shall have the meanings as stated herein:

- (1) Disadvantaged Business Enterprise (DBE) means a small business concern which is independently owned and controlled by one or more socially and economically disadvantaged individuals and which KDOT has certified as a DBE.
- (2) Small business concern means a small business as defined by Section 3 of the Small Business Act and relevant regulations except that a small business concern shall not include any firms or affiliated firms owned and controlled by the same socially and economically disadvantaged individual or individuals whose value has average, annual gross receipts in excess of \$22,410,000 over the previous three fiscal years.
- (3) Owned and controlled means a business:
 - (a) Which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals, and
 - (b) Whose management and daily business operations are controlled by one or more such individuals.
- (4) Socially disadvantaged individual means a person who is a citizen or lawful permanent resident of the United States, has suffered social disadvantage in education, employment, or business, and who is a(an):
 - (a) Black American (a person having origins in any of the black racial groups of Africa);
 - (b) Hispanic American (includes a person of Mexican, Puerto Rican, Cuban, Central or South American, or any Spanish or Portuguese culture or origin, regardless of race);
 - (c) Native American (includes a person who is American Indian, Eskimo, Aleut or Native Hawaiian);
 - (d) Asian-Pacific American (includes a person whose origin is from the original people of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands);

- (e) Subcontinent Asian American (includes a person whose origin is India, Pakistan, Bangladesh, Bhutan, Nepal, Sri Lanka, or the Maldives Islands);
- (f) Member of a group, or any other individual of any race or sex, found to be both economically and socially disadvantaged; or
- (g) Women.
- (5) Economically disadvantaged means an individual who has a personal net worth of less than \$750,000 excluding the value of their ownership share of the applicant firm and personal residence. The individual has had diminished access to capital and credit compared to non-disadvantaged persons.
- (6) Commercially useful function means the qualifying DBE owner performs manages and supervises subcontract work.
- (7) Race and gender neutral measure means one that is used to assist any small business.

II. DBE CONTRACT GOALS.

- A. KDOT strongly encourages all contractors to utilize DBE firms as subcontractors, suppliers, manufacturers, truckers, and brokers whenever possible and feasible. Greater voluntary participation will result in lower and fewer DBE contract goals. KDOT will set DBE contract goals only to meet the portion of its annual goal that is not met by race and gender neutral means and voluntary participation.
- B. An eligible DBE is one who KDOT has certified and who is listed in the KDOT DBE directory located on the internet at: http://www.ksdot.org/doingbusiness.asp. KDOT also prints a paper directory quarterly, and Contractors may ask the KDOT Office of Civil Rights for a copy of the printed directory. However, as it is only published quarterly, Contractors should be aware that the printed directory may list DBE's who were decertified after the directory was printed, and these DBE's would not be considered eligible DBE's in a letting that followed decertification or when examining good faith efforts. Also, the printed directory will not list DBE's who have been certified after the directory was printed, but KDOT will consider these DBE's in a letting and when examining good faith efforts. Thus, the electronic directory controls as it is the most current information KDOT has available. Any bid proposal listing a firm that is not a KDOT certified DBE at the time of bidding will be considered nonresponsive.
- C. Contractors shall, as a minimum, seek DBE firms working in the same geographic area in which they seek subcontractors for a given solicitation.
- D. Contractors are required to make good faith efforts to replace a DBE subcontractor that is unable to perform successfully with another DBE firm. In order to ensure compliance with this requirement, any substitution of DBE subcontractors after the Contractor has submitted a bid to KDOT, must be approved by KDOT Office of Civil Rights. Substitutions will only be allowed for good and sufficient reasons. KDOT must receive a letter from the original DBE stating the reason for the DBE's inability to perform.
- E. Contractors are also encouraged to use the services of banks owned and controlled by disadvantaged individuals.
- F. When projects are State or Contractor tied, KDOT will construe DBE participation as if the tied projects are one project. To check DBE participation on tied projects the following method will be used:
 - (1) Add the DBE goal dollar amount for the individual tied projects. This becomes the required minimum dollar amount to be subcontracted to DBEs.
 - (2) If the total dollar amount actually subcontracted to DBEs on the tied contracts is equal to or greater than the minimum dollar amounts as computed above, it will be determined that the DBE goals have been met.

(3) If a State of Kansas funded project is tied to a federal aid funded project, the DBE contract goals can only be met by DBE subcontractors on the Federal Aid Project.

III. MEETING DBE CONTRACT GOAL CRITERIA.

The award of the Contract will be conditioned upon satisfaction of the requirements herein established. The apparent low bidder must either meet or exceed the DBE goals for the contract or satisfy KDOT that good faith efforts were made to meet the goals prior to the bid letting.

A. REQUIRED DBE PARTICIPATION INFORMATION.

All bidders are required to submit to KDOT with the bid proposal the DBE participation information described below on the form provided in the proposal.

- (1) The names of KDOT certified DBE firms that will participate in the Contract (if none, so indicate);
- (2) A description of the work each named DBE firm will perform (if none, so indicate);
- (3) The actual dollar amount anticipated to be paid to each named DBE firm (if zero dollars, so indicate); except
- (4) If the named DBE firm is a supplier, enter 60% of the actual dollar amount anticipated to be paid (if zero dollars, so indicate);
- (5) The actual dollar amount (not to exceed 10 percent of DBE subcontract) to be paid ahead of work as DBE mobilization.
- (6) For federal aid contracts with a zero DBE goal, list all subcontractors to be utilized, including DBE firms, if any.

B. GOOD FAITH DETERMINATION.

It is the bidder's responsibility to meet the DBE contract goals or to provide information to enable KDOT to determine that, prior to bidding, the bidder made good faith efforts to meet such goals.

- (1) Good Faith Information Submittal. If the low bidder's required DBE information indicates that the DBE contract goals will be met, the contract will proceed toward award and the low bidder need not submit any further DBE information. Good faith documentation must be submitted within two working days of the bid opening. Example: if bids are opened on Wednesday at 2 p.m., the good faith documentation must be at KDOT Office of Civil Rights before 5 p.m. on Friday.
- (2) KDOT Review. KDOT will review all information submitted to determine if the low bidder has met the DBE contract goals and, if not, whether the low bidder made sufficient good faith efforts to meet such goals. The determination of good faith efforts is made on a case-by-case basis and depends on the particular circumstances of the procurement. The issue KDOT will consider is whether the bidder took those steps, a reasonable bidder would have taken to actively and aggressively obtain DBE participation sufficient to meet the goal. A KDOT determination that the low bidder's information failed to show sufficient good faith shall be just cause for rejection of the bid. If the low bid is rejected, the above procedure will be applied to the next lowest bidder, and other bidders if necessary, until a bidder is found that meets the DBE contract goals or establishes that good faith efforts were made to meet the goal. KDOT reserves the right to reject all bids and re-advertise the Contract.
- (3) Establishing Good Faith Efforts. To demonstrate good faith efforts to meet DBE contract goals, submit to KDOT documentation on the factors listed as (a) through (g). KDOT has assigned a percentage to each factor that shows the relative importance of each factor to KDOT and to the other

factors. These percentages are a guide only; the circumstances of a particular procurement may justify different percentages or consideration of factors not mentioned. In evaluating the reasonableness of the low bidder's efforts, KDOT may consider whether other bidders met the goal or failed to meet the goal. In evaluating the reasonableness of the low bidder's efforts, KDOT will consider all documentation submitted; yet, documentation created during the bidding process is more credible than documentation created after the letting.

- (a) The bidder negotiated in good faith with interested DBEs. It is the bidder's responsibility to consider the available pool of certified DBEs when determining subcontract or supply needs. It is the bidder's responsibility to furnish DBEs with information about plans or specifications to facilitate the bid. Include names of DBEs considered, information given to the DBE, if any, and an explanation of why agreements could not be reached for DBEs to perform the work. (25%)
- (b) The bidder selected portions of work for which KDOT has capable, certified DBE's to perform. This may include breaking out work items or subcontracting items the prime contractor normally performs. (20%)
- (c) The bidder used good business judgment in rejecting a DBE quote, considering both price and capabilities. If a DBE quote represents a reasonable price for performing the work, the bidder should use that quote even though the DBE quote is higher than a non-DBE quote. However, bidders do not have to use excessive or unreasonable quotes. Before determining that a DBE quote is excessive, the bidder should inquire as to the reason for the disparity between the DBE and non-DBE quotes. The bidder should also evaluate what impact, if any, using a higher DBE price would have on the bidder's overall project bid. A higher DBE price may not be excessive or unreasonable if the price differential is a very small part of the project bid. (20%)
- (d) The bidder solicited capable, certified DBEs through pre-bid meetings, advertising, telephone, mail, facsimile, e-mail, or a combination of the foregoing. The solicitation must have occurred within sufficient time to allow a DBE to respond. Follow up all initial contacts, whether the contact was solicited or unsolicited. If a DBE expresses an interest in the contact or a desire to quote and fails to submit a quote, follow up that contact, whether the contact was solicited or unsolicited. Receiving substantial unsolicited quotes may not be considered actively and aggressively pursuing DBE participation. (10%)
- (e) The bidder assisted interested DBEs in obtaining equipment, supplies, or materials for the project being bid. (10%)
- (f) The combinations of DBEs the bidder considered in trying to meet the goal. It is acceptable to use a portion of several DBE bids. (10%)
- (g) The bidder assisted interested DBEs in obtaining bonding, credit, or insurance on the project being bid. (5%)
- (4) Staff of KDOT's Office of Civil Rights and the Chief of Construction and Maintenance will review the documentation submitted and either accept or reject the good faith effort submittal.
- (5) At the bidder's request, KDOT's Director of Operations will hold an informal hearing to discuss the bidder's good faith effort submittal. The bidder may have legal counsel present, at the bidder's expense. After the appeal hearing, the Director of Operations will issue the Agency's final administrative decision on whether the bidder made a good faith effort. The decision will be in writing and will explain the basis for the Agency's decision. This will be final agency action and a final order under the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 et. seq. Any petition for judicial review shall be served on the Secretary of Transportation, Kansas Department of Transportation, 700 S.W. Harrison St., Topeka, KS 66603-3754.

C. COUNTING DBE PARTICIPATION TOWARD DBE CONTRACT GOALS.

DBE participation shall be counted toward meeting the DBE contract goals pursuant to this contract as follows:

(1) A contractor may count toward its DBE contract goals the total dollar value of a contract paid to an eligible DBE, including an approved DBE protégé.

NOTE: At the time the bid is submitted on the DBE goal sheet, list the actual amount intended to be paid to the DBE. On Form 259, submitted after award, list the same amount as in the contract line item. If this amount differs from the DBE subcontract amount, list the latter amount on the bottom of the form with an explanation.

- (2) A DBE, bidding as a prime contractor, may count toward its DBE contract goals the total dollar value of the work actually performed by the DBE prime contractor, including the cost of supplies and materials the DBE obtains. Example: A DBE contractor bids as a prime contractor. The contract specifies a \$10,000.00 DBE goal. The DBE prime contractor performs \$50,000 of the work with its own forces. The DBE prime contractor has met the \$10,000 goal.
- (3) A contractor may count toward its DBE goals a portion of the total dollar value of a subcontract with an eligible DBE joint venture equal in proportion to the percentage of ownership and control of the DBE partner in the joint venture. Example: A contract specifies a \$5,000.00 DBE contract goal. Prime contractor bids \$100,000.00 subcontracting with a joint venture DBE/non-DBE contractor for \$20,000.00 of the work. The percentage of ownership and control of the DBE/non-DBE joint venture is 25% DBE and 75% non-DBE. The prime contractor may count \$5,000.00 (\$20,000.00 x .25; i.e. total dollar value times the percentage of DBE ownership) toward the DBE contract goal, thus fulfilling the DBE requirements of the contract.
- (4) If a non-DBE contractor and DBE contractor form a joint venture and bid as a prime contractor, the joint venture contractor shall fully meet the DBE contract goals specified in the project special provision. The joint venture contractor may count toward its DBE contract goals the total dollar value of the work actually performed by the DBE participant in the joint venture.

Example: A non-DBE contractor forms a joint venture with a DBE contractor and the joint venture bids the project as a prime contractor. The DBE contract goal is \$10,000.00. The DBE participant in the joint venture performs \$50,000 of the work with its own forces. The joint venture has met the \$10,000 goal. Example: A non-DBE contractor forms a joint venture with a DBE contractor and the joint venture bids the project as a prime contractor. The DBE contract goal is \$100,000.00. The DBE participant in the joint venture performs \$80,000 of the work with its own forces. The joint venture must obtain the remaining \$20,000 in goal through use of another certified DBE firm, or show good faith efforts if the joint venture fails to meet the \$100,000 goal.

- (5) A contractor may count toward its DBE goals 60 percent of its expenditures for materials and supplies obtained from a DBE regular dealer, and 100 percent from a DBE manufacturer. A letter must be submitted to KDOT, detailing the amount, but the amount does not count as a subcontracted percentage.
 - (a) A manufacturer is a firm that operates a facility that produces goods from raw material on the premises.
 - (b) A regular dealer is a firm that owns, operates, or maintains a store, or warehouse where materials are stocked and regularly sold to the public. A regular dealer of bulk items (sand, gravel, etc.) need not stock the product if it owns or long-term leases distribution equipment. The supply of structural steel, steel assemblies and petroleum products do not count toward any KDOT DBE goal. A dealer must be responsible for material quality control and must deliver with its own or long term leased equipment to count toward the DBE goal.

C. COUNTING DBE PARTICIPATION TOWARD DBE CONTRACT GOALS.

DBE participation shall be counted toward meeting the DBE contract goals pursuant to this contract as follows:

(1) A contractor may count toward its DBE contract goals the total dollar value of a contract paid to an eligible DBE, including an approved DBE protégé.

NOTE: At the time the bid is submitted on the DBE goal sheet, list the actual amount intended to be paid to the DBE. On Form 259, submitted after award, list the same amount as in the contract line item. If this amount differs from the DBE subcontract amount, list the latter amount on the bottom of the form with an explanation.

- (2) A DBE, bidding as a prime contractor, may count toward its DBE contract goals the total dollar value of the work actually performed by the DBE prime contractor, including the cost of supplies and materials the DBE obtains. Example: A DBE contractor bids as a prime contractor. The contract specifies a \$10,000.00 DBE goal. The DBE prime contractor performs \$50,000 of the work with its own forces. The DBE prime contractor has met the \$10,000 goal.
- (3) A contractor may count toward its DBE goals a portion of the total dollar value of a subcontract with an eligible DBE joint venture equal in proportion to the percentage of ownership and control of the DBE partner in the joint venture. Example: A contract specifies a \$5,000.00 DBE contract goal. Prime contractor bids \$100,000.00 subcontracting with a joint venture DBE/non-DBE contractor for \$20,000.00 of the work. The percentage of ownership and control of the DBE/non-DBE joint venture is 25% DBE and 75% non-DBE. The prime contractor may count \$5,000.00 (\$20,000.00 x .25; i.e. total dollar value times the percentage of DBE ownership) toward the DBE contract goal, thus fulfilling the DBE requirements of the contract.
- (4) If a non-DBE contractor and DBE contractor form a joint venture and bid as a prime contractor, the joint venture contractor shall fully meet the DBE contract goals specified in the project special provision. The joint venture contractor may count toward its DBE contract goals the total dollar value of the work actually performed by the DBE participant in the joint venture.

 Example: A non-DBE contractor forms a joint venture with a DBE contractor and the joint venture bids the project as a prime contractor.

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- (5) A contractor may count toward its DBE goals 60 percent of its expenditures for materials and supplies obtained from a DBE regular dealer, and 100 percent from a DBE manufacturer. A letter must be submitted to KDOT, detailing the amount, but the amount does not count as a subcontracted percentage.
 - (a) A manufacturer is a firm that operates a facility that produces goods from raw material on the premises.
 - (b) A regular dealer is a firm that owns, operates, or maintains a store, or warehouse where materials are stocked and regularly sold to the public. A regular dealer of bulk items (sand, gravel, etc.) need not stock the product if it owns or long-term leases distribution equipment. The supply of structural steel, steel assemblies and petroleum products do not count toward any KDOT DBE goal. A dealer must be responsible for material quality control and must deliver with its own or long term leased equipment to count toward the DBE goal.

- (a) Monies the prime contractor pays directly for supplies, materials, labor or equipment on the DBE's behalf except for two-party checks approved under Section III.E below.
- (b) Costs deducted from a DBE's pay estimate for supplies, materials, labor or equipment the prime contractor or its affiliate provided.
- (c) Costs incurred for equipment the DBE leases from the contractor on the project if the DBE is using the equipment for that project only and the equipment is not part of a long term lease agreement.
- (d) Costs associated with a portion of a bid item that the Agency is unable to measure clearly.
- (e) Costs incurred for work subcontracted outside normal industry practices, just to meet a goal.
- (5) KDOT's determination that a DBE is not performing or did not perform a CUF is not appealable to the US Department of Transportation. KDOT's determination will be final agency action and a final order under the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. 77-601 et. seq. Any petition for judicial review shall be served on the Secretary of Transportation, Kansas Department of Transportation, 700 S.W. Harrison St., Topeka, KS 66603-3754.

E. BUSINESS INTEGRITY

Any person or entity will be found to be out of compliance with this required contract provision if any investigation reveals a commission or omission of any act of such serious or compelling nature that the act indicates a serious lack of business integrity or honesty. Such commission or omissions include, but are not limited to:

- (1) Violating any applicable law, regulation, or obligation relating to the performance of obligations incurred pursuant to an agreement with a recipient under a KDOT financial assistance program or,
- (2) Making, or procuring to be made, any false statement or using deceit to influence in any way any action of KDOT.

F. TWO PARTY CHECKS.

To comply with the current regulation, KDOT is implementing the following two party check procedures. The prime contractor is responsible for following the procedure and for ensuring that DBE subcontractors follow the procedure.

- The DBE owner shall make the request for a two party check to the Office of Civil Rights and shall explain the benefit to the DBE firm.
- (2) The prime contractor shall send the check to the DBE owner who will endorse and forward the check to the supplier. This should be done within the 10 day prompt pay timeframe.
- (3) The amount of the check should not exceed the amount of material paid by KDOT on the latest estimate. For example if the estimate was taken on 7/23, pay the material bill through 7/23 not through 7/31.
- (4) Two party checks shall be issued only long enough to establish credit for the DBE firm.
- (5) KDOT will not count towards goal or give DBE contract goal credit for two party checks that have not been pre-approved by KDOT.

IV. SANCTIONS.

If KDOT finds any contractor, sub-contractor, DBE, joint venture, or mentor/protégé to be out of compliance with this required contract provision, KDOT may impose one or more of the following sanctions:

(1) Withhold payment of progress payments until the contractor or DBE contractor complies with the payment requirements of this Special Provision.

- (2) Remove the non-complying DBE from the DBE directory until the DBE shows the company is meeting the requirements necessary to perform a CUF, including payment of all bills.
- (3) Deny goal credit as previously stated for failure to replace a non-performing DBE with another DBE (unless good faith effort was made), failure to meet the requirements necessary to perform a CUF, or failure to follow two party check procedures.
- (4) Assess and deduct as liquidated damages the monetary difference between the DBE goal amount and the amount actually paid to the DBEs for which KDOT has allowed DBE goal credit.
- (5) Reject the bidder's bid if the bidder failed to meet the DBE goal and failed to show good faith effort to meet the goal.
- (6) Refer the matter to the Office of the Attorney General, the US Department of Justice, or both for follow-up action.
- (7) Enforce all other remedies KDOT has under other contract provisions such as contract termination, contractor suspension, contractor debarment, and sanctions for failing to pay promptly.

01-26-09 OCR (DW/CDB) Jul-09 Letting



Project No	FP440019	07-19-80-R12 (MPO)
Contract No.		Sheet 1 of 1

REQUIRED CONTRACT PROVISION DBE CONTRACT GOAL

The total dollar goal to be subcontracted to KDOT-Certified DBE firms on this contract is \$_4,000.00

List all KDOT-Certified DBE subcontractors to be utilized. For each DBE subcontractor, identify the line item(s) of work from the Unit Prices List and the dollar value of the work to be subcontracted to the DBE.

IDENTIFICATION OF DBE PARTICIPATION

Name of KDOT-Certified DBE Subcontractor	Type of Work	\$ Value of work	
Shockey Consulting Services, LLC	Planning Support- application development	\$ 4,000.00 (minimum)	
		\$	
		\$	
		\$	
		\$	
		\$	

Total KDOT-Certified DBE \$ 4,000.00 (minimum) Parsons Brinckerhoff, Inc. 225 N. Market Street, Suite 350 Wichita, KS 67202 (Prime Bldding Consultant Name and Address)

A list of KDOT-Certified DBEs can be found in the Directory of Disadvantaged Business Enterprises at KDOT's website:http://www.ksdot.org/divAdmin/DBEConstruction/dbedir.aspx

documentation.

If \$ Value of Work is zero, please attached the Prime Bidding Consultant's Good Faith Effort

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council Members

SUBJECT: Nuisance Abatement Assessments, Lot Clean Up (Districts I, III, IV, V and VI)

INITIATED BY: Metropolitan Area Building and Construction Department

AGENDA: Consent

Recommendation: Approve the assessments and place the ordinance on first reading.

Background: The Metropolitan Area Building and Construction Department (MABCD) supports neighborhood maintenance and improvement through abatement of nuisances under Titles 7 and 8 of the City Code. State law and local ordinance allow the City to clean-up private properties that are in violation of environmental standards after proper notification is sent to the responsible party. A private contractor performs the work, and the MABCD bills the cost to the property owner.

<u>Analysis:</u> State law and City ordinance allow placement of the lot clean-up costs as a special property tax assessment if the property owner does not pay. Payment has not been received for the nuisance abatements in question, and the MABCD is requesting permission for the Department of Finance to process the necessary special assessments.

<u>Financial Considerations:</u> Nuisance abatement contractors are paid through budgeted appropriations from the City's General Fund. Owners of abated property are billed for the contractual costs of the abatement, plus an additional administrative fee. If the property owner fails to pay, these charges are recorded as a special property tax assessment against the property, which may be collected upon subsequent sale or transfer of the property. Nuisance abatements to be placed on special assessments are listed on the attached property list.

<u>Legal Considerations:</u> The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the proposed assessment and place the ordinance on first reading.

Attachments: Property List for Special Assessments and ordinance.

Geo Code #	PIN#	Address / Location	Amount	District #
00100461	A 01197	1102 N Waco Ave 1	\$475.00	6
00101626	A 02216	1821 N Broadway Ave	\$483.00	6
00166462	C 21047	2361 N Poplar Ave	\$547.00	1
00121992	B 03258	532 N Wabash Ave	\$748.62	1
00234895	D 33463	11006 W Taylor Cir	\$285.00	5
00136344	C 011460001	1504 N Ash Ave	\$606.02	1
00107140	A 06831	529 W Shirk St	\$750.59	3
00124906	B 05714	Vacant Lot 2 Lots South of 701 E Harry	\$987.69	3
00106590	A 06313	1353 S Main St	\$723.69	3
00126736	B 07172	711 S Ida Ave	\$430.00	1
00127193	B 075750001	742 S Ida Ave	\$664.51	1
00139291	C 03241	1627 N Chautauqua Ave	\$695.20	1
00135165	C 003270001	301 N Spruce St	\$586.90	1
00141830	C 05528	252 S Chautauqua Ave	\$716.53	1
00134919	C 00225	337 N Ash St	\$650.78	1
00241021	D 38762	532 S Maize Rd	\$5,350.00	4
00201041	D 02033	924 W Dayton	\$492.00	4
00155382	C 10499000C	602 N Oliver Ave	\$492.60	1
00203720	D 04018002G	132 N Saint Paul	\$477.80	6
00203153	D 03562	2909 W Maple	\$655.97	4
00228171	D 27306	935 W Meikle	\$1,280.59	4
00135991	C 0089400A2	1305 N Grove Ave	\$486.95	1
00203840	D 04128	145 N Athenian	\$631.93	6
00126132	B 06610	212 S Greenwood	\$601.74	1
00123829	B 04745	1004 S Topeka	\$609.92	3
00129660	B 09435	711 E Harry St	\$866.40	3
00209849	D 08849	402 S McComas St	\$576.81	4
00204017	D 04283	2439 W 3rd St N	\$534.20	6

Published in the Wichita Eagle on June 20, 2014

ORDINANCE NO. 49-764

AN ORDINANCE MAKING A SPECIAL ASSESSMENT TO PAY FOR THE COST OF ABATING CERTAIN PUBLIC HEALTH NUISANCES (**LOT CLEAN UP**) UNDER THE PROVISION OF SECTION 7.40.050 OF THE CODE OF THE CITY OF WICHITA, KANSAS. BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That the sum set opposite each of the following lots, pieces and parcels of land or ground, herein specified, be and the same is hereby levied to pay the cost of abating certain public nuisances under the provision of Section 7.40.050 of the Code of the City of Wichita, Kansas, which public health nuisances are determined to have existed upon the following described property:

Legal of Parcel in Benefit District

Assessment

LOTS 1001-1003 WACO AVE. LEWELLEN ADD.	475.00
LOTO CO CA DI COM Z FAIDMENA ADD	100.00
LOTS 22-24 BLOCK 7 FAIRVIEW ADD	483.00
S 5 FT LOT 79 & N 25 FT LOT 81 MAIN ST. FITZGERALD'S ADD.	723.69
ALL LOT 15 - LOT 17 EXC CITY PROPERTY SHIRK'S 4TH. ADD.	750.59
LOTS 8-10 HEIL ADD.	748.62
LOTS 114-116 BLOCK 9 ORME & PHILLIPS ADD.	609.92
LOTS 10-12 BLOCK 3 ALLEN & SMITH'S ADD.	987.69
S 10 FT LOT 42-ALL LOTS 44-46 FANNIE AVE. HYDE'S ADD.	601.74
N 2 1/4 FT LOT 8 - ALL LOTS 10-12 IDA AVE. WOLLMAN'S ADD.	430.00
LOTS 13-15 IDA AVE. KELSCH 3RD. ADD.	664.51
LOT 6 HARRY ST. SUB.	866.40
LOTS 55-57 BUTLER & FISHER'S SUB	650.78
PT LOTS 22-24 BEG 32 FT E NW COR LOT 22 E 20 FT S 36 FT SELY 11.15 FT TO PT 4 FT N & 77 FT W SE COR LOT 22 E 77 FT S TO N LI 2ND. ST. W 87 FT N TO PT 46 FT S OF N LI LOT 22 W 15 FT N 46 FT TO BEG BUSCH'S SUB	586.90
LOTS 41-43 SUNNY SLOPE ADD.	486.95
LOTS 136-138-140 SHORT NOW ASH ST. LOGAN ADD.	606.02
LOTS 21-23 CHAUTAUQUA AVE. WOODRIDGE PLACE ADD.	695.20
LOTS 42-44 DOUGLASS SUB. OF RICHLAND 2ND. ADD.	716.53

LOTS 50-51-52 BLOCK 4 EAST HIGHLANDS ADD.	492.60
LOT 2 BLOCK U AUDREY MATLOCK HEIGHTS 1ST. ADD.	547.00
LOTS 41-43 DAYTON AVE GLENDALE ADD.	492.00
ALL LOT 5 & E1/2 LOT 7 MAPLE ST STEWART'S SUB. OF RES A	655.97
LOTS 33-34 BLOCK 4 ACADEMY PARK ADD.	477.80
LOTS 13-15 MEAN'S ADD.	631.93
LOTS 21-23 KIRKPATRICK'S 3RD. ADD.	534.20
LOTS 2-4-6 BLOCK 7 QUINCY ADD.	576.81
LOT 32 BLOCK A DAVIS-WALKER ADD.	1280.59
LOT 18 BLOCK 1 WESTLINK SEVENTEEN ADD.	285.00
LOT 9 BLOCK A THE DELL ADD.	5350.00

SECTION 2. This ordinance shall take effect and be in force from and after its publication once in the official City paper.

ADOPTED, at Wichita, Kansas, this 17th day of June, 2014.

	Carl Brewer, Mayor
ATTEST:	
To a state of the	
Karen Sublett, City Clerk	
(SEAL)	
Approved as to form:	
Approved as to form.	
Gary E. Rebenstorf, Director of Law	

City of Wichita City Council Meeting

June 10, 2014

TO: Mayor and City Council

SUBJECT: Payment of Condemnation Award, Appraisers Fees and Court Costs in

Condemnation Matter to Acquire Property for Public Right of Way for the Completion of the Interchange at K-96 and Greenwich Road (District II)

INITIATED BY: Law Department

AGENDA: Consent

Recommendation: Authorize the payment of appraiser's award, together with appraisers' fees and court costs.

Background: On October 16, 2012, the City Council approved the design concept to improve the K-96/Greenwich Road Interchange. The project will require the partial acquisition of 12 properties. The tracts within the project corridor are a mixture of retail and undeveloped parcels. The proposed road improvement project includes completion of the interchange at K-96 and Greenwich Road to allow access to eastbound K-96 and access from westbound K-96, signalization of the interchange intersections and the intersection of Greenwich Road and Greenwich Village as well as turn lanes. The project requires the partial acquisition of 12 properties. The tracts within the project corridor consist of commercial buildings and undeveloped tracts.

<u>Analysis</u>: On May 15, 2014, the court appointed appraisers filed their award. The court appointed appraisers determined the compensation to be paid for the remaining ten required parcels to be \$165,000. The court approved fees to the three appraisers in the total amount of \$18,640.16 with court costs of \$180. In order for the City to acquire these properties, it must pay the award, together with fees and costs to the Clerk of the District Court on or before June 16, 2014.

Financial Considerations: The cost of acquiring these properties will be paid from project funds.

<u>Legal Considerations</u>: The City must pay the award within 30 days from the filing of the appraisers' award, or June 16, 2014, in order to get title to the property. If payment is not made to the Clerk by that date, the eminent domain is deemed abandoned. In that event the City would still be responsible for all fees, costs and the landowners' attorney fees.

Recommendation/Action: It is recommended that the City Council authorize payment to the Clerk of the District Court in the amount of \$183,820.16 for acquisition of property and easements condemned in the subject case.

Attachments: Report of Appraisers and Statement of Appraisers Fees and Expenses.

COPY

IN THE EIGHTEENTH JUDICIAL DISTRICT DISTRICT COURT, SEDGWICK COUNTY, KANSAS CIVIL DEPARTMENT

FILED APP DOCKET NO.

部 MY 15 P 3 33

THE CITY OF WICHITA, KANSAS, A Municipal Corporation,) 1978 JUNION COUNTY IN THE SECOND COUNTY IN SECOND COUNT
Plaintiff/Condemner,) Case No. 14 CV 0309
vs.) Action Involves Title To
ARC BRWCHKS001, LLC, et al.) Real Property
Defendants/Landowers.) Proceedings Pursuant To) K.S.A. 26-501 et seq.

REPORT OF APPRAISERS

We, the undersigned appraisers, appointed to view and appraise the value of certain lands and/or interests and/or rights therein, described in the Petition of the City of Wichita, Kansas, in the above captioned matter, and, to determine just compensation and damages to the interested parties resulting from the takings, after being duly sworn, now report as follows below.

On March 20, 2014 we caused notices of our hearing to be mailed to all defendants and interested parties named in the Petition whose addresses were known to us after diligent inquiry. On March 24, 2014 we caused such notice to be published in the Wichita Eagle, a newspaper of general circulation in Sedgwick County, Kansas.

On April 24, 2014, we conducted a public hearing at the Adams Jones Law Firm, P.A., 1635 N. Waterfront Pkwy #200, Wichita, Kansas at the time and place stated in the notices. At that time, we heard statements of counsel, heard oral testimony of witnesses, and, received written and other evidence concerning our appraisal and assessment of damages from Plaintiff and such of Defendants as were present and desired to be heard.

On that same date, we continued our appraisal and assessment of damages by actual view of the lands to be taken and the tract of which they are part.

After viewing the lands involved, considering the statements of counsel, considering testimony received at the hearing, all other written and other evidence presented by the parties present, and, in accordance with the instructions given us by the Court, we have appraised the lands and/or interests and/or rights therein sought by Plaintiff as described in the Petition. On that basis, we have determined just compensation and damages to interested parties resulting from the takings as follows.

I. TRACT NO. 11

A. FEE OWNER:

ARC BFWCHKS001, LLC, a Delaware limited liability company 600 La Terraza Boulevard Escondido, CA 02025

Copies To:

Corporation Service Company Registered Agent for ARC BFWCHKS001, LLC 2900 SW Wanamaker Drive, Suite 204 Topeka, KS 66614

ARC BFWCHKS001, LLC c/o American Realty Capital II, LLC Attn: William M. Kahane 106 York Road Jenkintown, PA 19046

Brad Stout, Esq. Adam Jones Law Firm, P.A. 1635 N. Waterfront Pkwy., Ste. 200 Wichita, KS 67206

B. LIENHOLDER

Deutsche Bank Trust, Company Americas, in its capacity as Trustee for the registered holders of Wells Fargo Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2011-C3

Address: 1055 10th Avenue SE, CMBS Department, Minneapolis, MN 55414

Information: By Assignment of Mortgage dated June 26, 2012, and filed October 5, 2012, in the Office of the Register of Deeds of Sedgwick County, Kansas, as Document No. 29323741. Original Mortgage, Assignment of Lease and Rents, Security Agreement and Fixture Filing dated March 18, 2011, and filed April 15, 2011, as Document No. 29212935.

Copies To:

Wells Fargo Bank, National Association 101 North Phillips Avenue Sioux Falls, South Dakota 57104

Corporation Service Company Registered Agent for Wells Fargo Bank, National Association 2900 SW Wanamaker Drive, Suite 204 Topeka, KS 66614

David Doughty
Kilpatrick Townsend & Stockton, LLP
1100 Peachtree Street NE
Suite 2800
Atlanta, GA 30309-4528

C. OTHER INTERESTED PARTIES:

(1) Colonial Bank

Address:

8214 Westchester Drive, Suite 100, Dallas, TX 75225

Information:

By UCC Financing Statement filed December 22, 2008, in the Office of the Register of Deeds of Sedgwick County, Kansas

as Document No. 29027242.

(2) BFS Retail & Commercial Operations, LLC, a Delaware limited liability co.

Address:

BK45, PO Box 81070, Cleveland, OH 44181

Information:

By Memorandum of Lease dated December 18, 2008, and filed December 22, 2008, in the Office of the Register of Deeds of Sedgwick County, Kansas, as Document No.

29027239.

Copies To:

National Registered Agents, Inc. Of KS

Registered Agent, BFS Retail & Commercial Operations, LLC

112 SW 7th Street, Suite 3C

Topeka, KS 66603

BFS Retail & Commercial Operations, LLC

Attn: Law Dept. - Real Estate Section

333 East Lake Street

Bloomingdale, Illinois 60101

- Easements and Other Matters Shown on Record Plat, If Any. (3)
- (4) Board of County Commissioners of Sedgwick County, Kansas

Address:

525 N. Main, #320, Wichita, KS 67203

D. REAL PROPERTY INTERESTS TO BE ACQUIRED:

Fee Simple Interest In:

Beginning at the Western most Southwest corner of Lot 10, Block 1, Village At Greenwich Addition to Wichita, Sedgwick County, Kansas; thence North, along the West line of said Lot 10, a distance of 129.00 feet to the Northwest corner of said Lot 10; thence Bast, along the North line of said Lot 10, a distance of 20.00 feet; thence Southwesterly for a distance of 86.31 feet to a point 5 feet East of said West line; thence South, parallel with said West line, a distance of 44.00 feet to the South line of said Lot 10; thence West, along said South line, a distance of 5.00 feet to the point of beginning, containing 0.029 acres (1,282.50 sq. ft.), more or less.

Temporary Construction Easement:

Commencing from the Western most Southwest corner of Lot 10, Block 1, Village at Greenwich Addition to Wichita, Sedgwick County, Kansas; thence East, along the South line of said Lot 10, a distance of 5.00 feet to the point of beginning; thence continuing East, along said South line, a distance of 20.00 feet; thence North, parallel with the West line of said Lot 10, a distance of 129.00 feet to the North line of said Lot 10; thence West, along said North line, a distance of 5.00 feet; thence Southwesterly for a distance of 86.31 feet to a point 5 feet East of said West line; thence South, parallel with said West line, a distance of 44.00 feet to the point of beginning, containing 0.045 acres (1,942.50 sq. ft.), more or less. Said interests are subject to all recorded and unrecorded easements, restrictions, and rights of way.

II. JUST COMPENSATION AND AMOUNT OF AWARD

We, the undersigned appraisers, state the following as to just compensation and the award:

Fair Market Value of Entire Property

Immediately Before the Taking:

\$ 1,800,000

Fair Market Value of Property Remaining

Immediately After the Taking:

\$ 1,635,000

Just Compensation and Our Award:

\$ 165,000

This award compensates the Landowner for the permanent loss of the fee simple interest in 1,282.50 square feet located at the western edge of the subject site. Said 1,282.50 square feet faces Greenwich Road and includes the northern half of the driveway entrance into to the subject site. This award also compensates the Landowner for the loss/replacement of landscaping, sod, one tree and part of a sprinkler system. And, the cost of obtaining the right to construct and constructing a new private road.

Additionally, this award also compensates the Landowner for the temporary use of another 1,942.50 square feet that is situated immediately east and adjacent to the aforementioned fee simple interest that is being taken. Said use is for a three year period.

As between the fee simple interest and the temporary construction easement, our award may be allocated as follows:

Fee Simple Interest Taking:

\$ 160,000

Temporary Construction Easement:

\$ 5,000

Just Compensation and Our Award:

\$ 165,000

<u>CW</u>

III. APPRAISERS' REASONING

This case involved various questions of law that were unresolved and in dispute at the time of the hearing. Accordingly, the Panel has considered and resolved those questions in accord with our instructions and K.S.A. 26-513. The following explanation is provided to assist the Court and the parties in understanding the Panel's determinations regarding these questions as well as our conclusions regarding before/after value and just compensation.

A. THE SUBJECT SITE - AS IS

The entire property (before any takings) is located at 2424 N. Greenwich Road in Wichita, Kansas. It sits on the east side of that road. To the south, the nearest major intersection is Greenwich and 21st Street. The nearest major intersection to the north is Greenwich and K-96.

The entire property (before any takings) consists of 44,526 square feet or 1.02 acres. It is improved with a 7,590 square foot auto service garage presently occupied by Firestone under a written lease. Although counsel for the City and Landowner each commented on specific terms of that lease, they were not in agreement as to lease content and neither provided a copy to the Panel.

Other improvements on the entire property consist of paved parking, and, an entrance drive that provides ingress/egress from Greenwich Road. Today, the entrance provides access to south bound as well as north bound traffic on Greenwich. Traffic proceeding north on Greenwich may turn right into the property. And, traffic proceeding south may turn left and thereby enter the site.

B. PURPOSE OF TAKINGS

The City of Wichita is taking Landowner's fee simple interest in 1,282.50 square feet that lies along the western boundary line of the entire parcel. The land that is the subject of the fee simple taking fronts Greenwich.

The City is doing so to construct another north bound lane on Greenwich. The new 'right turn lane' will provide easy and convenient access from the south to a new store (Sports Academy) that will be built immediately north of Landowner's property and immediately south of K-96.

Roughly, the fee simple taking will eliminate the northerly half of the subject's entrance drive. And, the temporary construction easement (1,942.50 sq. ft.) will provide 'working space' during construction of the new turn lane over the next three years.

C. RELATED DEVELOPMENT ACTIVITIES

1. K-96 and Greenwich Interchange and Road Improvement Project

Adding the aforementioned turn lane to provide north bound Greenwich traffic easy access into a new Sports Academy is just part of an overall development plan for the total area (the Greenwich/K-96 exchange area) where the subject site is located. That plan includes new Greenwich/K-96 entrance and exit ways. On Greenwich, it includes such traffic control devices as

four way signal lights at critical intersections and raised center medians to prevent cross-over traffic.

The scope of the plans presented to the Panel during the hearing included Greenwich Road from where it intersects 21st Street (south of K-96) on north to where Greenwich and K-96 intersect.

Prior to the filing of this suit, the City engaged the Roger Turner Company to conduct before and after real estate appraisals of the subject site at 2424 N. Greenwich Road (herein the "Turner Appraisal"). At the hearing, the City did not present the Turner Appraisal in its entirety or ask the Panel to adopt its findings. But the City did ask the Panel to adopt certain content from the Turner Appraisal and provided the Panel selected pages therefrom. Later in the hearing, Landowner's attorney provided the Panel a complete copy of the Turner Appraisal and asked that we review it.

The full scope of the planned changes to the area is discussed in the Turner Appraisal. It states that "in January 2013, the City of Wichita approved Phase 1 of the STAR Bond District for the proposed 423 acre Star Bond development. Around \$30 million in STAR bond funding for infrastructure and land acquisition will be utilized including \$9.5 million for changes to the K-96 Interchange. The first phase will include a full-service interchange at K-96 Highway and Greenwich Road, along with the signalization of critical intersections in the corridor" meaning intersections and development entrance/exit points along Greenwich from 21th to K-96. Turner Appraisal, p. 9.

In their presentations, the City and Landowner each pointed to these related activities (the interchange, signals at "critical intersections" and a raised center median) to support two very different views of the before/after value of the subject tract.

2. Impact On Access To The Subject Site

Today, anyone driving north on Greenwich may turn right into the subject site's parking lot.

That will not change. North bound traffic, and north bound access, is unaffected.

But south bound traffic on Greenwich will no longer be able to turn left at the driveway entrance to the subject site and thereby reach the parking lot. As part of the total improvement plan, the City is constructing a raised center median on Greenwich. Once that center median is built, southbound traffic will have to drive past the subject site and then do one of two things:

- Turn left at the first available entrance point in order to turn around or otherwise navigate back to the north and thereby reach the site; or
- Proceed to 21st Street and make a U-turn in order to proceed back toward the north on Greenwich itself.

Thus, the ease with which south bound traffic will be able to access the subject site in the future will be materially impacted.

3. Effect on Value Per Turner Appraisal

According to the Turner Appraisal, this change in access for south bound traffic (only) causes \$400,000 in devaluation of the subject site. It states "the lack of roadway access devalues the potential for the property" and the diminished access is the primary reason the before and after appraisals shifted from \$1.8 million to \$1.4 million.

More specifically, the Turner Appraisal states:

Current use as an auto service facility will continue to contribute to the value of the property after the taking but may change functionally with limited access to Greenwich Road traffic flowing southward. The service facility will continue, but direct retail traffic southbound will be lost due to the median at the entrance. The after condition will consider the character of the building and its design. It will be less desirable for a Firestone Store to be at this location than a smaller local tire store.

Turner Appraisal, at p. 30.

4. Use Of Cross-Lot Easements To Mitigate Partial Loss of Access

As noted, one of the means by which south bound traffic <u>might</u> be able to enter the subject site would be to proceed past Lot 10, Block 1 where the Firestone Store is located and then turn left into some neighboring commercial entrance (on the same side as Firestone, the eastern side of Greenwich) before reaching 21st Street further south.

On the next page of this Report, we have included the City's Site Map of the area. After the takings and all planned traffic projects are completed, traffic moving south on Greenwich will be able to proceed yet further south (past Lots 9 and 8) and then turn left into an "existing access drive" that separates Lot 8 from Lot 7.

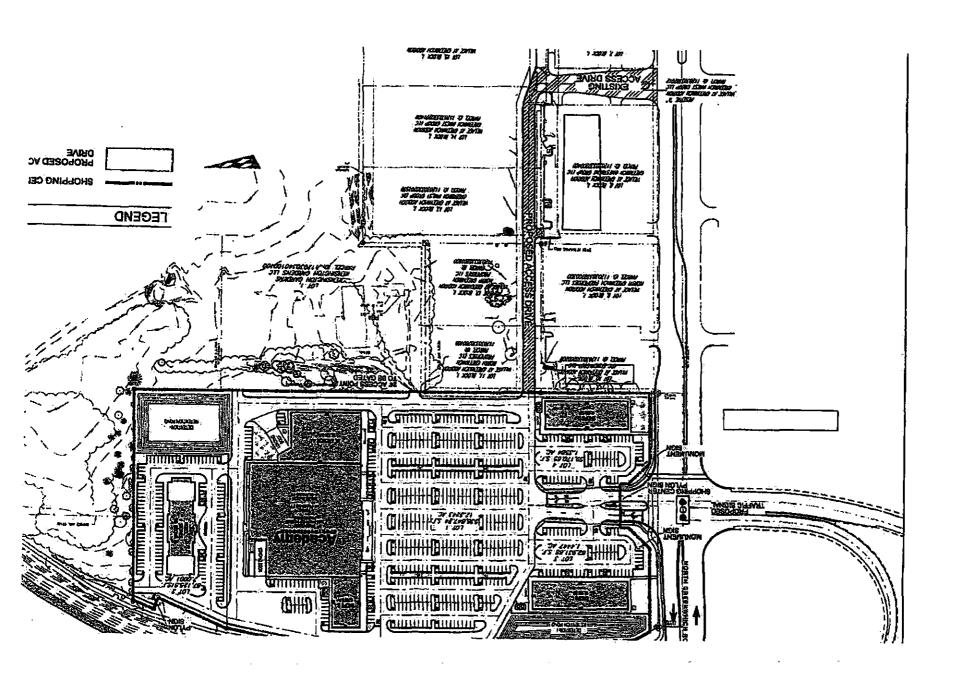
According to Turner, there exist cross-lot access agreements that could be used to construct the "proposed access drive" shown in the Site Map. The City's "proposed access drive" would then permit travel from the entrance that exists between Lots 8 and 7, to the north across Lots 8 and 9 (which is void of any improvements) and on into the parking area for the subject site on Lot 10.

Mitigating action taken by the developer regarding access to the store can be observed with the cross-access agreement found in the addendum of the [Turner Appraisal]. This is a joint agreement between the subject property owner and the developer of adjacent lots. However, [as no such internal road presently exists] this access assumes the availability of an internal road connecting the subject [Lot 10] with Lots 8 and 9 to the south ... Turner Appraisal, p. 30.

And Turner asserts:

The cross lot circulation agreement between lot holders permits cross-lot access ... Essentially, this permits all of the lots the right to enter and go through each of the lots in order to get access and parking to any other lot.

Turner Appraisal, p. 44.



According to Turner, the value of the property drops by \$400,000 due to loss of "traffic flowing to the site from the southbound side of Greenwich Road and having to enter the site through a series of cross-access agreements not fully developed into paved roads at the current time." Turner Appraisal, Letter of Transmittal. In other words, Turner opined the site devalued by \$400,000 due to the partial loss of access caused by the construction of a raised center median. And, Turner opined that loss could be partially mitigated by building a new access drive pursuant to cross-lot agreements.

As further discussed below, one of the issues presented in this case was whether the cross-lot easements and agreements were as expansive as Turner contends. Or, whether the scope of those agreements was limited to use of each other's roads as opposed to compelling new road construction.

D. POSITIONS OF THE PARTIES

1. Position of City - Compensation for Partial Loss of Access

According to the City, Turner got it wrong in suggesting just compensation should include \$400,000 for eliminating (due to raised center median) the ability of south bound traffic to directly access the subject site from Greenwich. City asserts that partial loss of access is not compensable. In support, City cites *Hales v. City of Kansas City*, 248 Kan. 181, 804 P.2d 347 (1991). There, the Court held "concurrent with a compensable taking ... the State may validly exercise its police power for traffic control ... for which there can be no compensation, even if it affects [but does not completely eliminate] the landowners' method of ingress and egress." *Id.* at Syl. 2.

2. Position of City - Scope of Cross-Lot Agreements

But, according to the City, Turner got it right in concluding the cross-lot agreements provided the means to ameliorate the aforementioned partial loss of access. The City has stated:

If it is determined necessary by the panel as an additional cost to cure item, a 25 foot wide access road extended 220 feet between the [subject] Firestone lot and the strip mall to the south (in order to connect traffic to the traffic signal immediately to the south of the Firestone entrance), can be constructed for approximately \$5.50 per sq ft (Turner & Co. estimate). At 5,500 square feet of surface area, this equals \$30,250.

City's Written Submittal to Panel, Tab 6, Reconciliation of Values, Note.

3. Position of City - Just Compensation

City claims the takings give rise to \$24,610 in damages for taking 1,282.50 square feet, subjecting 1,942.50 square feet to a temporary construction easement for three years, and, curing various items such as landscaping. In addition, City claims another \$30,250 could be awarded for the completion of a new private road i.e. construct the proposed new cross-lot agreement' road.

Thus, the City suggests total damages in the amount of \$54,860. The City did not make any attempt to alter the before appraised value of \$1.8 million set forth in the Turner Appraisal. Presumably, this means the City feels an appropriate valuation of the parcel after the takings would be \$1.8 million minus this \$54,860 or approximately \$1.745 million.

4. Position of Landowner - Compensation for Partial Loss of Access

Landowner asserts Turner got it right in assigning value (for purposes of this action) to the partial loss of direct access for traffic that is south bound on Greenwich.

Further, Landowner claims this Panel cannot apply (or even consider) any of the case law cited by the City regarding non-compensation for the construction of the raised center median. According to Landowner, such case law may not be considered because it is outside this Panel's instructions and it is not mentioned in any of the factors enumerated at K.S.A. 26-513(d).

5. Position of Landowner - Scope of Cross-Lot Agreements

Landowner has suggested the Panel not consider (in any manner) the cost of any new private roads. Landowner's Submittal, Tab B, p. 4. During the hearing, Landowner's counsel stated the extended private access drive from the interior of Lots 7/8, through Lot 9 and into Lot 10 was merely "proposed" and not a certainty.

6. Position of Landowner - Just Compensation

Landowner contends Turner got it wrong is assigning a 'before' value to the subject site at \$1.8 million. Turner's before valuation was based on an assumed market rental rate of \$20 per square foot capitalized at 7.5% for a national tenant.

Landowner suggests the before value is roughly \$3.5 million. Landowner bases this view on escalator clauses in the specific written lease it has with Firestone (that the Panel has never seen) and use of a capitalization rate of only 6.5% instead of 7.5% as used by Turner. To the resultant \$2.9 million, Landowner then adds another \$600,000 for the value of "the leasehold of estate" for a before valuation of \$3.5 million.\frac{1}{2} Landowner's Submittal, Tabs B/C.

From this \$3.5 million starting point, Landowner argues it should be compensated at least \$400,000 (in accord with Turner) for lost southbound access together with such other damages as may be awarded upon consideration of the factors set forth at K.S.A. 25-513(d).

Additionally, one of the consultants engaged by Landowner suggested its lease with Firestone "would be prized by most investors." Landowner's Submittal, Tab C, p. 1, email from Rod Stewart to Brad Stout. And, according to Landowner's counsel, that lease includes Firestone's "right to

¹ Kansas follows the undivided fee rule. If any dispute exists between Owner/Lessor and Leasee, a separate procedure exists for judicial resolution. See City of Manhattan v. Kent, 228 Kan. 512, 618 P.2d 1180, 1184 (1980).

terminate ... due to this taking." Id. But as noted, notwithstanding these suggestions and claims, at no time has the Landowner provided the Panel with a copy of the Firestone lease.

E. APPRAISERS' CONCLUSIONS - APPLICATION OF CASE LAW

As a starting point, the Panel considered opposing arguments on whether it could consider case law. According to K.S.A. 26-513(d)(2), the Panel might consider as a factor "access to the property remaining." And if that were all the Panel had to go on, it likely would have concluded some dimunition in value would occur once a far less direct and more circuitous route becomes necessary. But that is *not* all that this Panel had to go on.

Pursuant to K.S.A. 26-504(2), this Panel includes "at least two" panelists who "have experience in the valuation of real estate." Such experience would typically include case law that can be traced back more than 35 years. <u>See McCall Service Stations</u>, Inc. v. City of Overland Park, 215 Kan. 390, 524 P.2d 1165 (1974). In fact, one of the cases cited by the City demonstrates how easily this can occur.

In the instant case, the City relies on Pringle v. City of Wichita, 22 Kan. App.2d 297, 917 P.2d 1351 (1996) in support of its proposition that the raised center median (and resultant impact on south bound access) does not constitute a compensable taking. The landowners in Pringle included Frank McMaster, John McMaster (Frank's son), and, Susan McMaster (Frank's daughter). The subject land was located at 127th Street East and Kellogg. Panelist Jeff Emerson now represents John McMaster in an estate proceeding the scope of which includes the same land. In the Matter of the Estate of Francis McMaster, Sedgwick County District Court, Case No. 06 PR 0440.

Further, the Panel has been instructed to "consider the nature of the interest condemned as described in the condemnor's petition" in determining fair market value. Instructions, p. 2. The petition does not describe any interest in traffic flow and it does not appear any such interest has

been condemned.

In addition, the instructions to the Panel direct us to set values "immediately before the taking" and "immediately after the taking." *Id.*, pp. 2-3. Nothing instructs us to set values immediately before and after construction of traffic control devices in the middle of a street the City already owns. Rather, our inquiry must be limited to the impact of the taking itself. Stated another way, our inquiry must not consider actions on the part of the City that do not constitute a taking as to do so would be contrary to our Instructions.

Moreover, we note that K.S.A. 26-513(d) contains a "nonexclusive list" of factors that may be considered. Thus, it appears other factors (such as case law) should always be considered if they impact "total compensation and damage" under K.S.A. 26-513(b) and (c).

Rules of law that hold something present in this case is <u>not</u> compensable clearly constitute one of the non-enumerated factors that should be considered as impacting "total compensation" under the applicable statute.

The Panel also notes that Landowner itself presents case law in support of its positions. Specifically, Landowner relies on rules of law announced in and provides the Panel citation to the case of City of Roeland Park v. Jasan Trust, et al., 281 Kan. 668, 132 P.3d 943 (2006). Further, Landowner argues the Panel should evaluate "noncompliance with zoning code" although the zoning code is not set forth in the Instructions or at K.S.A. 26-513.

The Panel rejects the overly narrow reading of the Instructions and K.S.A. 26-513(d) urged by Landowner. Sauce for the goose is sauce for the gander. We understand Landowner wants us to apply *other* case law. We did. And, the Panel considered and applied the City's suggested case law (as well as related cases) during our deliberations.

F. APPRAISERS' CONCLUSIONS - IMPACT OF RAISED CENTER MEDIAN

The Panel concludes the City is correct in its assertion that neither the median nor the impact thereof may be considered in assigning before/after values as steps toward determining the "amount of compensation and damages" owed to Landowner. K.S.A. 26-513(d). We adopt and incorporate herein the cover note and memorandum set forth in the City's Submittal at Tab 3.

In doing so, we apply the rules set forth in the following cases:

- Hales v. City of Kansas City, 248 Kan. 181, 804 P.2d 347 (1991) (wherein the Court held a limitation of access by installing raised medians that divided north/south lanes was an exercise of police power for which no compensation was payable);
- Eberth v. Carlson, 266 Kan. 726, 971 P.2d 1182 (1999)(holding "a city may regulate traffic by exercising its police power without compensation to abutting landowners by ... prohibiting access or crossovers between separated traffic lanes");
- Pringle v. City of Wichita, 22 Kan. App. 2d 297, 917 P.2d 1351 (1996)(holding "an abutting owner has no right to the continuation of a flow of traffic in front of his property" and the proper exercise of police power includes prohibiting left turnes and crossovers without compensating impacted landowners);

In City of Wichita v. McDonald's Corp., 266 Kan. 708, 971 P.2d 1189 (1999) the Court said "K.S.A. 26-513(d)(2) specifically uses the term "access to the property remaining." The court will not rewrite that language to mean "access to the highway remaining." "Access to the property remaining" ... refers to a "right of access" and not regulation of traffic flow." Id. at Syl. 5. For that reason, a "landowner cannot recover for the diminution of value due to the regulation of traffic flow of the highway system where that regulation is a reasonable exercise of the city's police power." Id. at Syl. 7.

Accordingly, the Panel in this case declines to allow Landowner to recover for dimunition of value due to City's regulation of traffic flow by installing a raised center median.

G. APPRAISERS' CONCLUSIONS - SCOPE OF CROSS-LOT AGREEMENTS

The Panel has carefully reviewed and considered whether the cross-lot agreements provide a way to restore access to the property remaining to a fuller extent than the option of forcing drivers to execute U-turns at the busy intersection of Greenwich and 21st Street. The Panel concludes that, in their present form, they do not.

The Panel finds nothing in the Declaration of Cross Lot Circulation and Access Easement dated September 8, 2008 as could be used to force the owner of Lot 8 to build, on Lot 8, the "proposed access drive" suggested by the City. Cross easements were granted "over and across, through and around" each other's roads, entry ways, parking lots, common areas and driveways. If such a private road presently existed at the rear of Lot 8 or 9 it could be used by customers at Lot 10. But such a road does not exist and the owner of Lot 10 does not have the right to build it.

The Reciprocal Easement Agreement dated December 18, 2008 did grant "a non-exclusive, permanent irrevocable access easement ... for ... ingress and egress ... over, upon, across and through all Common Areas." And it states that "nothing contained herein shall constitute a requirement that either party construct improvements on their respective properties."

Exhibit C to that Agreement is the next page of this Report. Lot 9 is presently void of any surface improvements. Lots 9 and 10 (where the Firestone exists) are adjacent properties. Thus, it does not appear the 12/18/08 Agreement could be used to force the owner of Lot 9 to build a road on Lot 9. Nor force the owner of Lot 9 to permit someone else to come onto Lot 9 and build such a road. In short, we conclude these Agreements grant an easement in existing roads - not the right to build new roads. Accordingly, we conclude such rights will first need to be purchased (by the owner of Lot 10) before the City's curative "proposed access drive" could ever be built.

H. APPRAISERS' CONCLUSIONS REGARDING VALUATIONS

We adopt the conclusions of Turner & Co. regarding the before value (\$1.8 million) of the property. The parties are not in agreement on the content of the written lease with Firestone and neither has provided a copy of that lease to the Panel. For that reason, we are adopting as reasonable and correct in the marketplace the rental rate, vacancy rate, capitalization rate, comparative sales data, replacement cost data and other factors used by Turner & Co. to assign a value of \$1.8 million to the property before the takings.

The Panel has not applied the 'summation method' but rather has the unit rule. See City of Manhattan v. Kent, supra; Ellis v. City of Kansas City, 225 Kan. 168, 589 P.2d 552 (1979). When all applicable factors are considered together, we conclude the value of the property will diminish \$165,000 after the takings. That is the difference between the fair market value of the property before and after the takings. That is the total compensation and damages due Landowner.

The value of the land being taken for a permanent right of way (1,282.50 square feet) is roughly \$11 per square foot. The all-in value of all lost landscaping (inclusive of one small tree and part of a sprinkler system) is about \$6,000.

A new private road could be built for about \$35,000. But before it can be built, the right to build it must be purchased as the Cross Lot Agreements do not afford such rights.

Unless the owners of adjacent lots are ready to build now, a premium must be paid. And, those adjacent owners are likely fully aware that the private road is Landowner's best means to fully restore traffic flow. Thus, we conclude \$15 per square foot would be reasonable for a strip of land that is 220' by 25'. Once the land is purchased (for about \$104,000) the new road can be built (for about \$35,000). In addition to these factors, we also conclude the loss of the land being taken for a temporary construction easement is \$5,000.

I. NON-CONFORMING USE

During the hearing, Landowner stated the taking of a strip between the Firestone building and Greenwich would create inadequate set-back and result in a non-conforming use. City subsequently provided the Panel additional information with citation to the Unified Zoning Code at Sec. III-E-1.e(7). The Panel concludes no setback issue will exist as a result of the takings.

Similarly, the City is now on record as "simply need[ing] a request and a revised landscape plan" to put the subject site in conforming use after the takings. The Panel concludes no issue exists with respect to landscaping.

J. CLOSING

We, the undersigned, adopt this Report as our own and agree to submit the same to the parties herein (and the Sedgwick County District Court) forthwith.

Respectfully,

Leo Coseland

Charles Wiggins

Jeff Emerson



IN THE EIGHTEENTH JUDICIAL DISTRICT DISTRICT COURT, SEDGWICK COUNTY, KANSAS CIVIL DEPARTMENT

FILED APP DOCKET NO.

THE CITY OF WICHITA, KANSAS, A Municipal Corporation,

Plaintiff-Condemnor.

LATA GOLDEN DISTRICT SEDGWICK COUNTY, KS

2814 MAY 15 P 3:33

BY

VS.

Case No. 14-CV-0309 Court No. 23

Action Involves Title To Real Property

ARC BFWCHKS001, LLC, et al.

Defendants-Landowners.

STATEMENT OF APPRAISERS FEES AND EXPENSES

Pursuant to K.S.A. 26-505, on this 15th day of May, 2014, the Court-appointed appraisers submit the following statement for their fees and expenses for acting as the Court's appraisers herein:

Jeff Emerson:

37.9 hours @ \$ 225.00 per hour is \$ 8.527.50 0 miles @ \$0. per mile is \$ 0 out-of pocket expenses total of \$ 36.50

Total: \$ 8.564.00

Charles Wiggins:

21 hours @ \$ 250.00 per hour is \$ 5,250.00 86 miles @ \$0.56 per mile is \$ 48.16 out-of pocket expenses total of \$ 0

Total: \$ 5.298.16

Leo A. Goseland:

19 hours @ \$250.00 per hour is \$4.750.00

50 miles @ \$0.56 per mile is \$28.00

out-of pocket expenses total of \$0

Total: \$ 4.778.00

The foregoing Report of our fees and expenses is well and truthfully made and in witness whereof, we have hereunto affixed our signatures this 15th day of May, 2014.

APPRAISERS:

Jeff Emerson

Charles Wigatins

Leo Coseland

Subscribed and sworn to before me this 15th day of May, 2014.

CATHERINE A BROWN
Notary Public Spale of Kangas
My Appt. Expires

My Appointment Expires 08/22/2016

202

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: Engineering Design of ASR Water Supply Option – Contract Amendment

(All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the Amendment.

Background: In November of 2012, City Council approved a study to predict the demand for water and evaluate options to meet that demand including the addition of El Dorado water or to expand treatment and injection capacity in the Equus Beds as indicated in the 1993 Water Master Plan. The results of this study and the models provided to the City have culminated in the presentation of a White Paper recommending the two most cost effective options for drought protection, treated water from El Dorado and the expansion of the Aquifer Storage and Recovery Project (ASR) with the addition of sidestream storage. The El Dorado option is fairly straightforward, however, the City has requested a third party review and one percent design of the ASR expansion proposal for the July 29, 2014 Workshop.

Burns & McDonnell has been asked to perform this review as an amendment to an existing contract due to the compacted time frame. On December 4, 2012, City Council approved the professional services contract with Burns & McDonnell to determine the impacts on the City's ASR water yield from the Multi-Year Flex Accounts created by Senate Bill 272. This legislation was enacted in 2012, and gives water permit holders the ability to average their water use over a five-year period.

Analysis: The enhanced ASR project includes the addition of pumps at the intake structure, a side stream storage basin, additional wells and pipeline within the Equus Beds wellfield as well as the construction of a second raw water transmission main to town. Modeling indicates that the additional system yield with the proposed project is approximately 11,000 acre-feet a year. A third party will review the modeling that has been performed, the constructability of the project, operational strategies, regulatory issues, cost estimates and potential roadblocks. Burns and McDonnell is uniquely qualified to provide this review in the requested time frame. They have been involved in the ASR project from its conception as part of the Integrated Local Water Supply Plan, created Resnet, the original reservoir model that has been used to project the future supply from Cheney and the Equus Beds wellfield, performed the hydraulic modeling for operation of the recharge project, used the USGS groundwater model to manage the recharge credit accounting for the City, wrote the Environmental Impact Statement and review for the ASR program and was the final designer of the ASR Phase II intake structure, surface water treatment plant and recharge wells. They have staff experienced with prior ASR projects that will be available to complete the tasks in the requested time frame.

<u>Financial Considerations:</u> The original agreement with Burns & McDonnell is \$154,824, and was paid on a cost reimbursement basis. The amendment will not exceed \$174,931. Funding for this agreement is available in the Aquifer Storage and Recovery project budget. The funding source is the Water Utility. The project will be funded by future revenue bond sales or Water Utility cash reserves.

Legal Considerations: The Law Department has reviewed and approved the amendment as to form.

<u>Recommendation/Action:</u> It is recommended that the City Council approve the amendment, and authorize the necessary signatures.

Attachment: Amendment.



AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT ENGINEER-OWNER AGREEMENT

ENHANCED ASR PROJECT

AM	EN	DIV	IEN'	Γ Νο	. 1

Date: June 2, 2014

THIS AMENDMENT modifies the Agreement dated <u>December 4, 2012</u> made by and between **Burns & McDonnell Engineering Company, Inc.,** (hereinafter called ENGINEER), and <u>the City of Wichita, Kansas</u> (hereinafter called OWNER) for the following Project: <u>IMPACT OF 5-YEAR DROUGHT TERM PERMITS – SB272 (Project No. 448-90573).</u> For good and valuable consideration, the sufficiency of which is acknowledged, the parties agree to make the following changes to their Agreement.

- 1. The parties agree that the ENGINEER's Scope of Services is amended to include the detailed scope of services attached as Exhibit "D":
- 2. The following adjustments are made to the ENGINEER's compensation:

Payment to the Engineer for the performance of the professional services shown in Exhibit "D" shall not exceed \$174,931.00, per the attached cost table shown in Exhibit "E", and may be less than the estimated amount.

3. The time for completion of ENGINEER's Services is adjusted as follows:

Draft report to OWNER no later than July 11, 2014, based on a Notice to Proceed by June 2, 2014.

4. Other changes to the Agreement, if any, are stated below:

None.

5. The terms of this AMENDMENT supersede any contrary terms of the Agreement. This AMENDMENT will be deemed a part of, and be subject to, all other terms and conditions of the Agreement. Except as modified above, the Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this AMENDMENT the day and year first written above.

OWNER: City of Wichita, Kansas	ENGINEER: Burns & McDonnell Engineering Company, Inc.
Ву:	Ву:
Name:	Name: Ron Coker, P.E.
Title:	Title: Senior Vice President

Exhibit D City of Wichita-Enhanced ASR Project Scope of Services

Services and tasks associated with review and conceptual design of the Enhanced Equus Beds Aquifer Storage and Recovery Project utilizing Side Stream Storage, additional recharge capability and parallel raw water pipeline from the Equus Beds Wellfield. All evaluations will include projected opinions of probable cost where appropriate.

Project Administration and Management

- Provide description of existing infrastructure including function, capacity/capability and limitations
- Develop project work plan including definition of project deliverables, identification of project stakeholders (regulators and others) and required coordination. It is anticipated that meetings and coordination will be required with KDHE, DWR, GMD2, USGS, USACOE as well as other local stakeholders.
- Attend meetings as requested by City of Wichita Staff.

Raw Water Intake

- Evaluate average annual potential number of days and quantities of water available from the Little Arkansas River with diversion rates of 30 MGD, 45 MGD and 60 MGD. Use data from USGS gage at Sedgwick.
- Determine facilities required at raw water intake to capture 45 MGD and 60 MGD and provide pre-sedimentation for all diversion rates.
- Evaluate facilities required to divert 15 MGD, 30 MGD, 45 and 60 MGD to the Side Stream Storage facility.
- Evaluate head requirements of existing settled water pumps to determine if they are capable of pumping to either the ASR Treatment Plant or the Side Stream Storage facility. Identify modifications if required.
- Evaluate water quality related operational impacts.
- Assess water rights issues associated with utilizing the Side Stream Storage facilities.
- Determine pipeline sizes, configuration, and potential routes for a pipeline to new Side Stream Storage facilities based on various diversion quantities. Consider alternative connection requirements to existing raw water pipeline (single or parallel pipeline used for inflow and outflow from Side Stream Storage facilities.
- Evaluate risks of potential regulatory or other identified obstacles.

Side Stream Storage Facilities

- Evaluate storage capacity options of Side Stream Storage facilities on the proposed site and prepare conceptual design of Side Stream Storage facilities.
- Identify alternate/supplemental sites as necessary to reach storage goals.
- Identify and address O&M issues and concerns including those related to short and long term maintenance activities.
- Determine pumping facility requirements to pump water from Side Stream Storage facilities to the ASR Treatment Plant for 15 and 30 MGD flow rates.
- Determine if adequate electrical service is available to the site of Side Stream Storage facilities, and if not, what improvements may be needed.

- Determine average annual additional recharge capacity gained from use of Side Stream Storage facilities
- Evaluate risks of potential regulatory and other identified obstacles.

ASR Treatment Plant

- Determine O&M impacts to ASR Treatment Plant associated with use of Side Stream Storage facilities including potential water quality changes associated with temporary storage of diverted river water.
- Estimate average number days / hours of plant operation.
- Address additional water quality analysis requirements associated with raw water storage and increased plant operation.
- Evaluate NPDES permit considerations if membrane backwash and other O&M related wastes are returned to the River under lower flow conditions.
- Evaluate risks of potential regulatory and other identified obstacles.

Recharge Facilities

- Determine number and potential locations for additional recharge facilities to optimize recharge capabilities.
 - Include use of recharge/recovery wells and recharge basins at new sites and existing sites owned by the City.
 - Include consideration of recharge basins using passive recharge wells to reduce excavation depths of recharge basins.
 - Include evaluation of sites based on ownership of sites and potential ease of obtaining new sites based on ownership.
 - Facility locations to consider efficiency of recharge within the project area and redevelopment strategy and options. Location of new facilities will also consider pipeline maintenance and water quality issues associated with dual use pipelines.
- Determine size and locations of new pipelines required to achieve additional recharge and recovery capacity.
- Prepare Tract Maps for proposed pipeline routes.
- Evaluate risks of potential regulatory and other identified obstacles.

Recharge/Recovery Enhancement

- Evaluate options and permit modifications that would provide opportunities to enhance recharge capacities/credits through regulatory adjustments that may be available, including:
 - Direct Recharge Credits for water diverted from Little Arkansas River whether recharged or diverted directly to the City's Water Treatment Plant
 - Ability to use existing raw water pipelines for simultaneous recharge and recovery (compared to existing requirements to isolate pipelines during recharge).
- Evaluate the use of parallel pipelines to enhance recharge/recovery capabilities.
- Evaluate risks of potential regulatory and other identified obstacles.

Enhanced ASR Impacts and Results

• Evaluate, using average annual recharge opportunities, the time required to store enough water to meet a 2% and a 1% drought occurrence when combined with the City's other water sources. Provide modeling support as requested.

New Pipeline from Equus Beds

- Utilize raw water hydraulic model to determine appropriate size and potential routing of new raw water pipeline from Southeast portion of Equus Beds Wellfield to the City of Wichita. Include evaluation of impacts to piping at Main Water Treatment Plant.
- Determine potential routes for new pipeline.
- Evaluate risks of potential regulatory or other identified obstacles.

City is responsible for completion of all Modsim modeling work.

City of Wichita, Kansas Enhanced ASR Project BMCD Project No. 71395 June 2, 2014

Enhanced ASR Project			
LABOR			
Joh Catagory 2014 Pates	Lovel	Project	
Job Category - 2014 Rates Level		Extension	
Principal II	17	\$	-
Principal I	16	\$	24,090
Associate II	15	\$	-
Associate I	14	\$	46,632
Senior II	13	\$	12,032
Senior I	12	\$	37,368
Staff II	11	\$	-
Staff I	10	\$	7,436
Assistant III	9	\$	21,320
Assistant II	8	\$	-
Assistant I	7	\$	-
Technician	6	\$	-
LABOR TOTAL		\$	148,878
EXPENSES (OTHER CHARGES)			
Item		E	xtension
Technology Fee		\$	8,338
Travel		\$	3,015
Outside Services - Subcontractor - Survey/Geotech		\$	13,200
Reprographics		\$	1,500
EXPENSE TOTAL		\$	26,053
TOTAL PROJI	ECT COST	\$	174,931

Second Reading Ordinances for June 10, 2014 (first read on June 3, 2014)

A. <u>Amendment of Trust Indenture for Tax-Exempt Revenue Bonds, McCormick- Armstrong Co. Inc.</u> (District I)

ORDINANCE NO. 49-758

AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS APPROVING SUPPLEMENTAL TRUST INDENTURE NO. 1 TO A CERTAIN TRUST INDENTURE ENTERED INTO BY THE CITY IN CONNECTION WITH THE ISSUANCE OF ITS INDUSTRIAL REVENUE BONDS, SERIES III, 2008 (McCORMICK-ARMSTRONG CO., INCORPORATED).

B. ZON2014-00004 and Cup2014-00008 Abolition of the Falcon Falls commercial

Community Unit Plan DP-283 and Rezoning from the LC Limited Commercial District to
the TF-3 Two-Family Residential District on Property Located Northwest of the
Intersection of North Hillside Avenue and East 45th Street North. (District I)

ORDINANCE NO. 49-761

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

C. A09- Annexation of right-of-way for Kellogg east of Woodlawn (District II)

ORDINANCE NO.49-759

AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN BLOCKS, PARCELS, PIECES AND TRACTS OF LAND WITHIN THE LIMITS AND BOUNDARIES OF THE CITY OF WICHITA, KANSAS. (A09-05)

D. A14-03 Request by Dean W. and Pauline Nicholson Living Trust and Robert W. and Janet S Kingsley to annex lands generally located south of 37th Street North, approximately one-quarter mile west of Hoover Road. (District 5)

ORDINANCE NO. 49-760

AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN BLOCKS, PARCELS, PIECES AND TRACTS OF LAND WITHIN THE LIMITS AND BOUNDARIES OF THE CITY OF WICHITA, KANSAS. (A14-03)

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: SUB2014-00015 -- Plat of David and Palmer Addition located West of

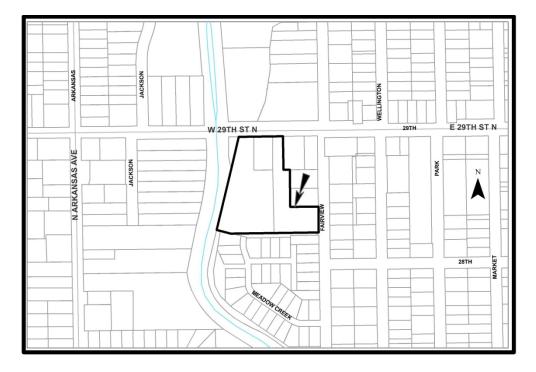
Broadway, on the South Side of 29th Street North (District VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

<u>Staff Recommendation</u>: Approve the plat.

MAPC Recommendation: Approve the plat. (9-0)



Background: The site, consisting of two lots on 4.59 acres, is located within Wichita. A zone change (ZON2009-00032) has been approved from B Multi-family Residential to GC General Commercial. The plat is subject to a Protective Overlay (PO #238) addressing signage, lighting, noise, building height and development standards.

Analysis: Water and sewer services are available to serve the site. The applicant has submitted a Restrictive Covenant to provide for the ownership and maintenance responsibilities of the reserves being platted. The applicant has submitted a Notice of Protective Overlay identifying the approved Protective Overlay and special conditions for development on the property. The applicant has submitted a Cross-lot Drainage Agreement as required by Stormwater Management. The applicant has submitted a Declaration of Easement to provide cross-lot access for the benefit of the abutting property to the east.

The plat has been reviewed and approved by the Metropolitan Area Planning Commission subject to conditions.

Publication of the Ordinance should be withheld until the plat is recorded with the Register of Deeds.

<u>Financial Considerations</u>: There are no financial considerations associated with the plat.

<u>Legal Considerations</u>: The Law Department has reviewed and approved the Restrictive Covenant, Notice of Protective Overlay, Cross-lot Drainage Agreement and Declaration of Easement as to form and the documents will be recorded with the Register of Deeds.

The Law Department has reviewed and approved the Ordinance as to form.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat, authorize the necessary signatures, and place the Ordinance on first reading. Publication of the Ordinance should be withheld until the plat is recorded with the Register of Deeds.

Attachments: Restrictive Covenant.

Notice of Protective Overlay. Cross-lot Drainage Agreement. Declaration of Easement.

Ordinance.

Published in The Wichita Eagle on June 20, 2014

ORDINANCE NO. 49-765

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2009-00032

Zone change request from B Multi-family Residential to GC General Commercial subject to Protective Overlay #238, on property described as:

David & Palmer Addition, Wichita, Sedgwick County, Kansas.

Generally located west of Broadway, on trhe south side of 29th Street North.

SUBJECT TO THE FOLLOWING PROVISIONS OF PO #238:

- A. No off-site or portable signs shall be permitted on the subject property. No building signs shall be permitted along the face of any building that is adjacent to any property that is zoned residential.
- B. Signs shall be in accordance with the City of Wichita sign code, with the exception that signs shall be monument-style.
- C. Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from any abutting or adjacent properties that are in a residential zoning district. Light poles shall be limited to a maximum height, including the base of the light pole, of 20 feet. Light poles shall not be located within any setbacks.
- D. Outdoor speakers and sound amplification systems shall not be permitted.
- E. No buildings shall exceed one story in height with a maximum building height of 45 feet.
- F. At the time the site is redeveloped the owner shall install and/or maintain 6-8-foot solid screening located parallel to the south, west and east property lines of the subject site, where it abuts and is adjacent to existing residential zoning.
- G. At the time the site is redeveloped landscaping shall be installed that meets the Landscape Ordinance.
- H. All driveways, parking, loading and vehicle circulation shall be paved with concrete, asphalt or asphaltic concrete.
- I. A 35-foot setback shall run parallel to the east, west and south sides of the property.

J. The following uses shall not be permitted: group residence, limited and general, correctional placement residence, private and public recycling stations, recycling processing center, reverse vending machine, hotel – motel, kennels, recreational marine facility, night club, commercial parking, pawnshop, indoor and outdoor recreation, recreational vehicle campground, riding academy or stable, rodeo, sexually orientated business, tattooing or body piercing, tavern/drinking establishment, outdoor vehicle and equipment sales, limited and general asphalt or concrete plant, gas and/or fuel storage and sales, general manufacturing, mining or quarrying, rock crushing, solid waste incinerator, outdoor storage and vehicle storage yard.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this 17th day of June, 2014.

ATTEST:		
Karen Sublett, City Clerk	Carl Brewer, Mayor	
(SEAL)		
APPROVED AS TO FORM:		
Gary E. Rebenstorf, Director of Law		

COPY

Restrictive Covenant

This covenant, executed this 304 day of 4pr. 1, 2014.

WITNESSETH:

WHEREAS, the undersigned are in the process of platting that certain real property to be known as Lot 1, Block 1, David & Palmer Addition, Wichita, Sedgwick County, Kansas; and

WHEREAS, as a part of the platting process certain requirements have been made by the Wichita-Sedgwick County Metropolitan Commission providing for the ownership and maintenance of the reserves.

NOW, THEREFORE, the undersigned do hereby subject David & Palmer Addition to Wichita, Sedgwick County, Kansas, to the following covenants:

- 1. The reserves located in said addition will be conveyed to the lot owners at such time as the project is sold to or occupied by owners or tenants other than the undersigned.
- 2. Until said reserves are so conveyed, the ownership and maintenance of the reserves shall be by the undersigned.
- 3. In the event that the undersigned, its successors or assigns, shall fail to maintain the reserves, the City of Wichita may serve a Notice of Delinquency upon the undersigned setting forth the manner in which the undersigned has failed to fulfill its obligations, as defined in the Operation and Maintenance Manual, recorded at the Sedgwick County Register of Deeds. Such Notice shall include a statement describing the obligation that has not been fulfilled. If said obligation has not been fulfilled within the said time specified, the City of Wichita, may, in order to preserve the taxable value of the properties within the Addition and to prevent the reserves from being a nuisance, enter upon said reserves and perform the obligations listed in the Notice of Delinquency. All cost incurred by the City of Wichita in carrying out the obligations of the undersigned may be assessed against the reserves in the same manner as

provided by law for such assessments and said assessments may be established as liens upon said reserves. Should the undersigned, its successors or assigns, upon receipt of reason, within the twenty-day period to be provided in said notice, apply for a hearing before the City Council to appeal said assessments, any further proceedings under said Notice shall be suspended pending the outcome of any proceedings with respect to such appeal.

4. This covenant is binding on the owners, their successors and assigns, and is a covenant running with the land and is binding on all successors in title to the above described property.

IN TESTIMONY WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

.00
By: Miller
Walter Palmer, owner
State of Kansas)
County of Sedgwick)
Be it remembered that on this <u>304</u> day of <u>hr. 1</u> , 2014, before me a Notary Public in and for said State and County, came Walter Palmer, owner, to me personally known to be the same person who executed the foregoing instrument of writing and duly acknowledged the execution of the same. In testimony whereof, I have hereunto set my hand and affixed my notarial seal the day and year above written.
My Appointment Expires: My Appl Entres 1 12-17
APPROVED AS TO FORM:
Gary E. Rebenstorf, Director of Law

COPY

NOTICE OF PROTECTIVE OVERLAY David & Palmer Addition (PO#236)

THIS NOTICE made this 30 4 day of 12014, by Walter Palmer, Owner, hereinafter called "Declarant,"

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

Lots 1-2, Block 1 David & Palmer Addition, an addition to Wichita, Sedgwick County, Kansas

WHEREAS, Declarant is desirous to file notice that a protective overlay approved by the City of Wichita is on file with the Wichita-Sedgwick County Metropolitan Area Planning Department, located on the 10th Floor, City Hall, Wichita, Kansas, (316) 268-4421.

NOW, THEREFORE, the Declarant gives notice that the approved David & Palmer Addition Protective Overlay #236 has placed restrictions on the use and requirements on the development of the above-described real property. The protective overlay shall be binding on the owners, their heirs, or successors or assigns and is a document running with the land and is binding on all successors in title to Lots 1-2, Block 1, David & Palmer Addition.

EXECUTED the day and year first written above.

By:
Walter Palmer, owner

STATE OF KANSAS
SEDGWICK COUNTY)

SS

BE IT REMEMBERED, that on this day of ________, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Walter Palmer, Owner, personally known to me to be the same persons who executed the within instruments of writing and such persons duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above-written.

My Commission Expires:

My Appl. Expires:

My Appl. Expires:

My Appl. Expires:

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

COPY

CROSS LOT DRAINAGE AGREEMENT

THIS AGREEMENT made <u>304</u> day of <u>April</u>, 2014, by <u>Walter Palmer</u>, owner, hereinafter referred to as the "Grantor".

WHEREAS the Grantors are the owners of the following described real estate:

Lots 1&2, Block 1, David & Palmer Addition, Wichita, Sedgwick County, Kansas;

WHEREAS, the above described real property is contiguous to and lie directly adjacent to each other and to unplatted Parcels bound by the David & Palmer Addition on the south and west, 29th Street North on the north, and Fairway Avenue on the east; and

WHEREAS, the Grantors desire to provide a perpetual cross lot drainage agreement over and across Lots 1&2, Block 1, David & Palmer Addition;

NOW THEREFORE, in consideration of the premises:

Grantor hereby subjects the above described real property to allow that unplatted Parcels bound by the David & Palmer Addition on the south and west, 29th Street North on the north, and Fairway Avenue on the east, may drain over, under, and across Lots 1&2, Block 1, David & Palmer Addition, as necessary in accordance with a final drainage plan filed with the City of Wichita.

This covenant shall be binding on the owner, their heirs, or successors or assigns and is a covenant running with the land and is binding on all successors in title to the above described real property.
millaler.
Walter Palmer, owner
STATE OF KANSAS) COUNTY OF SEDGWICK) SS
BE IT REMEMBERED, that on this 304 day of 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Walter Palmer, owner, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf, and as the act and deed of said company.
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.
Notary Public A Joanne Doris Scranland Notary Profis - Seas of Kenses My Commission Expire 1/-18-17
APPROVED AS TO FORM:
Gary E. Rebenstorf, Director of Law

DECLARATION OF EASEMENT

This Declaration is made as of this 304 day of ______, 2014, by the undersigned.

WHEREAS

The undersigned are the owners of real property described as Lot 1, Block 1, David and Palmer Addition, Wichita, Sedgwick County, Kansas;

WHEREAS

The undersigned desires that access for vehicular traffic will be across and through the north 50 feet of the described property, for the benefit of the property described as: Beginning at 100 feet West of the NE Corner of the West 1/2 of the NE1/4, thence West 114 feet, South 210 feet, East 114 feet, North to the beginning, SEC 5-T27S-R1E, Sedgwick County, Kansas, if and when said property is developed for non-residential use.

NOW THEREFORE

The undersigned hereby declare, establish, covenant, and grant to and for the benefit of the respective property, for the convenience of the owners, employees, and invitees of the owners thereof, mutual non-exclusive easements and rights-of-way for the purpose of ingress and egress of vehicular and pedestrian traffic along and across the portion of the property to be established as a driveway. Said easement is for the purpose of providing ingress and egress for the benefit of the above described property, the owners thereof, their employees, and invitees. There shall be erected no fence or other barrier which would prevent or obstruct the passage of such vehicular traffic between said lots. This Declaration shall not be construed to create any rights to the general public nor as a dedication to public use of any portion of said property. The easements herein granted shall be deemed covenants that run with the land and shall inure to the benefit of and be binding upon the owners of said lots, their successors and assigns.

EXECUTED the day and year first above written.

Walter Palmer, owner

STATE OF KANSAS)
) SS: SEDGWICK COUNTY)
BE IT REMEMBERED, that on this 30 H day of
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.
SEAL John Das June
(My Commission Expires: 1-18-17) My April Engine 11-18-17
APPROVED AS TO FORM:
Gary E. Rebenstorf, Director of Law

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: SUB2014-00018 -- Plat of Sonic Addition located on the East side of Broadway,

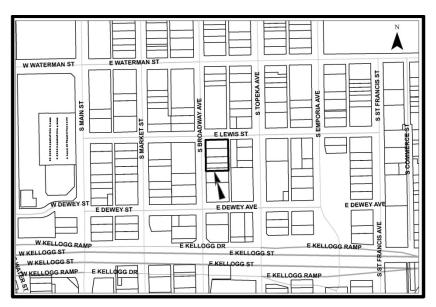
North of Kellogg (District I)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

<u>Staff Recommendation</u>: Approve the plat.

MAPC Recommendation: Approve the plat. (9-0)



<u>Background</u>: The site, consisting of one lot on .66 acres, is zoned CBD Central Business District (CBD).

Analysis: The site is currently being served by water and sewer.

The plat has been reviewed and approved by the Metropolitan Area Planning Commission subject to conditions.

<u>Financial Considerations</u>: There are no financial considerations associated with the plat.

<u>Legal Considerations</u>: There are no legal considerations associated with the plat.

<u>Recommendations/Actions</u>: It is recommended that the City Council approve the documents and plat and authorize the necessary signatures.

<u>Attachments</u>: There are no attachments associated with the plat.

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: VAC2013-00011 - Request to Vacate Portions of Platted Access Control on

Property Generally Located South of 19th Street North on the West Side of

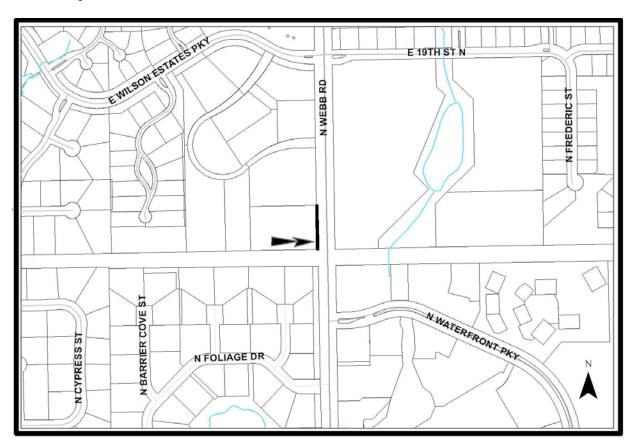
Webb Road. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

<u>Staff Recommendation:</u> Staff recommends approval of the vacation request.

<u>MAPC Recommendation:</u> The Metropolitan Area Planning Commission recommends approval of the vacation request (11-0).



June 10, 2014 VAC2013-00011

Page 1 of 2

Background: The applicant proposes adding one right in – right out drive onto Webb Road. The proposed drive will be located on the south end of the east lot line of Lot 1, Block 1, Wilson Estates Medical Addition. As approved there are no conflicting drives. There is public water located in this portion of the Webb Road right-of-way. The applicant has an approved plan, for the extension of public water, as requested by Public Works. The proposed drive will cross a platted drainage and utility easement. The applicant has an approved plan, as requested by Stormwater. The proposed drive would also cross into a 100-foot wide KG&E easement. The applicant has agreed to move a Westar utility pole. The applicant has an approved building permit, for the proposed drive. The Wilson Estates Medical Addition was recorded with the Register of Deeds January 8, 2003.

<u>Analysis:</u> The Metropolitan Area Planning Commission (MAPC) voted (11-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

<u>Financial Considerations:</u> All improvements are to City standards and at the applicant's expense.

<u>Legal Considerations:</u> The Law Department has reviewed and approved, as to form, the Vacation Order and a dedication of access control by separate instrument. The original Vacation Order and the dedication of access control by separate instrument will be recorded with the Register of Deeds.

Recommendation/Actions: It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order and authorize the necessary signatures.

Attachments:

- Vacation Order
- Access Control dedicated by separate instrument

COPY

DEDICATION ACCESS CONTROL

WHEREAS, WEBB ROAD PARTNERS, LLC, a Kansas limited liability company, as owner of the below described property, has petitioned the City of Wichita to vacate the platted access controls for the same per Vacation Case numbered VAC2013-00011; and

WHEREAS, It is necessary to re-dedicate access controls for the below described property; and WHEREAS, WEBB ROAD PARTNERS, LLC, a Kansas limited liability wishes to do the same; and

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, being the owners of the

Lot 1, Block 1, Wilson Estates Medical Park, an addition to Wichita, Sedgwick County, Kansas

Do hereby transfer and convey to the City of Wichita all abutters' right of access, ingress and egress to said property from or to north Webb Road over and across the east line of the above described property; provided however, the following access openings shall be allowed:

- One right-in/right-out opening along 40.00 foot of Webb Road frontage; Beginning at the southeast corner of Lot 1, Block 1, Wilson Estates Medical Park, an addition to Wichita, Sedgwick County, Kansas, thence 40.00 feet north along the east line of said addition.
- One full-movement opening along 60.00 foot of Webb Road frontage; Beginning 197.28 feet north of the southeast corner of Lot 1, Block 1, Wilson Estates Medical Park, an addition to Wichita, Sedgwick County, Kansas, thence 60.00 feet north along the east line of said addition.

following described real estate, to-wit:

It is understood that this conveyance is a covenant running with the land and prohibits all subsequent owners thereof and all members of the public from entering upon said property from Webb Road except for the described aforementioned two openings to Webb Road thereto.

Executed this <u>Kin</u> day of <u>May</u>	, 2014.
WEBB ROAD PARTNERS, LLC, a Kansas limited liability company By: Transcontinent Holding Company, LLC, a Its sole member	Kansas limited liability company
By: Parb. Do, Manager	
SEDGWICK COUNTY) SS STATE OF KANSAS)	
	day of
personally known to me to be the same personally	in who executed the foregoing instrument of writing same. In testimony whereof I have hereunto set
	Notary Public: What June
DENITA FREEMAN Notary Public - State of Kanasas My Appt. Expires	My Appointment Expires: $\frac{5}{35}$

BEFORE THE CITY COUNCIL OF THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS

IN THE MATTER OF THE VACATION OF PORTIONS)	
OF PLATTED ACCESS CONTROL)	
)	
)	
GENERALLY LOCATED SOUTH OF 19 TH STREET)	VAC2013-00011
NORTH ON THE WEST SIDE OF WEBB ROAD)	
)	
)	
)	
MORE FULLY DESCRIBED BELOW)	

VACATION ORDER

NOW on this 10th day of June, 2014, comes on for hearing the petition for vacation filed by Webb Road Partners, LLC, c/o Pat D. Do (owner), praying for the vacation of the described portions of platted access control, to-wit:

One right-in/right-out opening along 40.00 foot of Webb Road frontage; Beginning at the southeast corner of Lot 1, Block 1, Wilson Estates Medical Park, an addition to Wichita, Sedgwick County, Kansas, thence 40.00 feet north along the east line of said addition.

One full-movement opening along 60.00 foot of Webb Road frontage; Beginning 197.28 feet north of the southeast corner of Lot 1, Block 1, Wilson Estates Medical Park, an addition to Wichita, Sedgwick County, Kansas, thence 60.00 feet north along the east line of said addition.

The City Council, after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, makes the following findings:

June 10, 2014 VAC2013-00011 Page 1 of 2

- 1. That due and legal notice has been given by publication, as required by law, in The Wichita Eagle on April 18, 2013, which was at least 20 days prior to the public hearing.
- 2. No private rights will be injured or endangered by the vacation of the above-described portions of the platted access control and the public will suffer no loss or inconvenience thereby.
- 3. A dedication of access control by separate instrument will be recorded with this Vacation Order at the Sedgwick County Register of Deeds.
 - 4. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- 5. No written objection to said vacation has been filed with the City Clerk by any owner or adjoining owner who would be a proper party to the petition.
- 6. The vacation of the described portions of the platted access control should be approved.

IT IS, THEREFORE, BY THE CITY COUNCIL, on this 10th day of June, 2014, ordered that the described portions of the platted access control are hereby vacated. IT IS FURTHER ORDERED that the City Clerk shall send this original Vacation Order to the Register of Deeds of Sedgwick County.

ATTEST:	Carl Brewer, Mayor
Karen Sublett, City Clerk	
Approved as to Form:	
Gary Rebenstorf, Director of Law	

June 10, 2014 VAC2013-00011

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: VAC2014-00001 - Request to Vacate a Portion of Platted Access Control and the

Plattor's Text on Property Generally Located Midway Between 119th and 135th

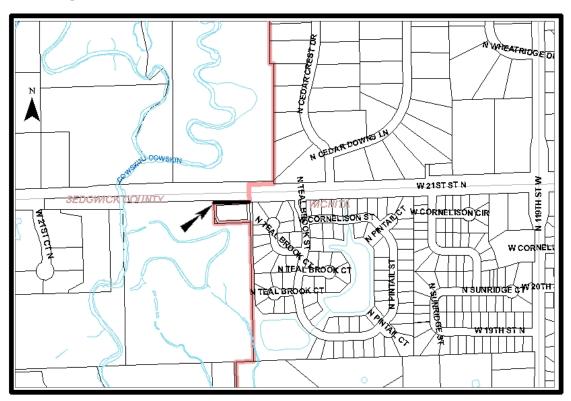
Streets West on the South Side of 21st Street North. (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

<u>Staff Recommendation:</u> Staff recommends approval of the vacation request.

MAPC Recommendation: The Metropolitan Area Planning Commission recommends approval of the vacation request (11-0).



Background: The applicant proposes to vacate a west portion of the platted access control located along the north lot line of Lot 1, Block A, Greiffenstein Square Addition. If approved, the proposed vacation will allow an additional drive from the subject site onto 21st Street North. The additional drive will allow school busses to circulate off of and onto 21st Street North from the subject site. Currently the permitted one drive onto the subject site restricts efficient and safe circulation off of and onto 21st Street North from the subject site. School busses currently drop of and pick up students while parked on 21st Street North. The additional drive will allow school busses to drop off and pick up students from the subject site; 21st Street North is a paved two-lane arterial at this location. The drive will also cross through the portion of Reserve A, Greiffenstein Square Addition that runs parallel to 21st Street North and the west portion of the reserve. Currently the plattor's text for Reserve A allows one drive through the reserve. The proposed drive has an approved plan. The Greiffenstein Square Addition was recorded with the Register of Deeds August 2, 2011.

<u>Analysis:</u> The Metropolitan Area Planning Commission (MAPC) voted (11-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

<u>Financial Considerations:</u> All improvements are to City standards and at the applicant's expense.

<u>Legal Considerations:</u> The Law Department has reviewed and approved, as to form, the Vacation Order and a covenant for future cross lot access easement. The original Vacation Order and the covenant for future cross lot access easement will be recorded with the Register of Deeds.

Recommendation/Actions: It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order and authorize the necessary signatures.

Attachments:

- Vacation Order
- Covenant for future cross lot access easement

COPY

Page 1 of 2

COVENANT FOR A FUTURE CROSS-LOT ACCESS EASEMENT

WHEREAS, Kimberly Fielding is the owner of the following described property:

Lot 1, Block A and Reserve "A", Greiffenstein Square, an Addition to Wichita, Sedgwick County, Kansas.

WHEREAS, the undersigned is in the process of vacating Access Control to allow an additional access point to 21st Street North, and

WHEREAS, an application and request for approval for the vacation of Access Control has been filed with the Metropolitan Area Planning Commission, VAC2014-00001 and

WHEREAS, Subdivision approval is conditional upon an agreement to provide Cross-Lot Access Agreement <u>if necessary</u> upon the possible future development of the abutting property adjacent to the west of the above described property, and

WHEREAS, the City of Wichita requires an agreement to join in a mutual Cross-Lot Access Easement over, through and across said properties for ingress and egress purposes, and

NOW, THEREFORE, be it known that the undersigned does hereby agree to commit to participating in such possible future agreement on behalf of themselves, their successors, grantees, licensees and assigns in interest, for ingress and egress purposes the right of access across the above described property.

It is hereby covenanted that such covenant for future cross-lot access shall be a perpetual agreement until and unless amended, revoked or released by all of the parties in interest or their successors or assigns and that the same shall be a covenant running with the land and shall be binding upon the grantors herein, their grantees, their heirs, assigns, licensees, successors and assignees in interest.

VAC2014 01: Covenant for future cross lot access easement

Covenant for a Future Cross-Lot Access Easement Page 2 of 2

It is further contracted and covenanted that the development of subject properties shall be accomplished in a manner so as not to impede, inconvenience and/or impede cross-lot access for the general purposes herein set forth. IN WITNESS WHEREOF, this document executed this ____ day of ______ 2014. STATE OF KANSAS) SS SEDGWICK COUNTY The foregoing instrument acknowledged before me this 10 day of 1 Kimberly Fielding, a single person. Notary Public My Appointment Expires: SHELBY SHUGART NOTARY PUBLIC

STATE OF KANSAS

My Appt. Exp. 🕰

BEFORE THE CITY COUNCIL OF THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS

)
)
)
) VAC2014-00001
)
)
)
)

VACATION ORDER

NOW on this 10th day of June, 2014, comes on for hearing the petition for vacation filed by Kimberly D. Fielding (owner), praying for the vacation of the described portion of platted access control and the plattor's text, to-wit:

That part of the Access Control over the north line of Reserve "A" and a second drive crossing over Reserve "A" from 21st Street North described as the East 30 feet of the West 45.84 feet of Reserve "A" and being the West 30 feet of Lot 1, Block A, all in Greiffenstein Square, an Addition to Wichita, Sedgwick County, Kansas. &

Vacate the plattor's text for Reserve A, Greiffenstein Square Addition to allow one more drive through Reserve A, Greiffenstein Square Addition for a total of two drives.

The City Council, after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, makes the following findings:

June 10, 2014 VAC2014-00001 Page 1 of 2

- 1. That due and legal notice has been given by publication, as required by law, in The Wichita Eagle on January 30, 2014, which was at least 20 days prior to the public hearing.
- 2. No private rights will be injured or endangered by the vacation of the above-described portion of the platted access control and the plattor's text and the public will suffer no loss or inconvenience thereby.
- 3. A covenant for future cross lot access easement will be recorded with this Vacation Order at the Sedgwick County Register of Deeds.
 - 4. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- 5. No written objection to said vacation has been filed with the City Clerk by any owner or adjoining owner who would be a proper party to the petition.
- 6. The vacation of the described portion of the platted access control and the plattor's text should be approved.

IT IS, THEREFORE, BY THE CITY COUNCIL, on this 10th day of June, 2014, ordered that the described portions of the platted access control and the plattor's text are hereby vacated. IT IS FURTHER ORDERED that the City Clerk shall send this original Vacation Order to the Register of Deeds of Sedgwick County.

ATTEST:	Carl Brewer, Mayor
Karen Sublett, City Clerk	
Approved as to Form:	
Gary Rebenstorf, Director of Law	

June 10, 2014 VAC2014-00001 Page 2 of 2

City of Wichita City Council Meeting June 10, 2014

TO: Mayor and City Council

SUBJECT: VAC2014-00011 - Request to Vacate a Platted Street Right-of-Way on Property

Generally Located West of Meridian Avenue and north of Pawnee Avenue.

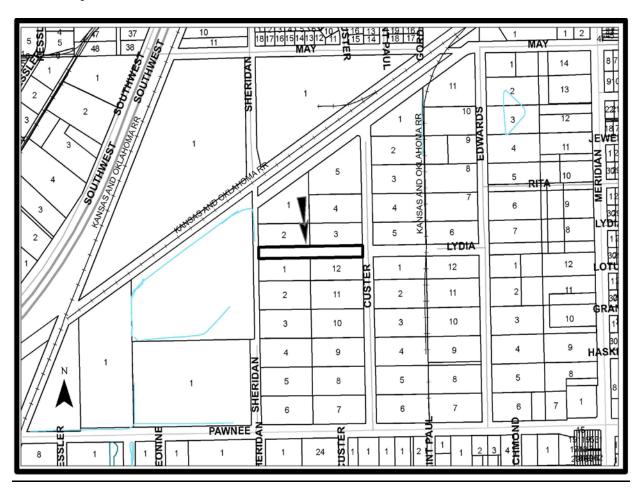
(District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

<u>Staff Recommendation:</u> Staff recommends approval of the vacation request.

<u>MAPC Recommendation:</u> The Metropolitan Area Planning Commission recommends approval of the vacation request (9-0).



June 10, 2014 VAC2014-00011

Page 1 of 2

Background: The applicants propose to vacate that portion of the unimproved Lydia Avenue located between Custer Avenue (east side), Lots 2 and 3, Block 6, Southwest Industrial Addition (north side), Sheridan Avenue (west side), and Lots 1 and 12, Block 7, Southwest Industrial Addition. The applicants own the abutting properties. The proposed vacation does not deny access to public streets for any abutting or adjacent properties. The applicants have provided drainage and utility easements and a stormwater easement to cover existing utilities. The applicants have provided covenants binding and tying the vacated street right-of-way to the abutting properties. The Southwest Industrial Addition was recorded with the Register of Deeds August 8, 1953.

<u>Analysis:</u> The Metropolitan Area Planning Commission (MAPC) voted (9-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Financial Considerations: All improvements are to City standards and at the applicant's expense.

<u>Legal Considerations:</u> The Law Department has reviewed and approved, as to form, the Vacation Order, drainage and utility easements dedicated by separate instruments, a stormwater easement dedicated by separate instrument and covenants binding and tying the vacated street right-of-way to the abutting properties. The original Vacation Order, drainage and utility easements dedicated by separate instruments, a stormwater easement dedicated by separate instrument and covenants binding and tying the vacated street right-of-way to the abutting properties will be recorded with the Register of Deeds.

Recommendation/Actions: It is recommended that the City Council follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order and authorize the necessary signatures.

Attachments:

- Vacation Order
- Two drainage and utility easements dedicated by separate instruments
- Two covenants binding and tying the vacated street right-of-way to the abutting properties
- A stormwater easement dedicated by separate instrument

COPY

DRAINAGE & UTILITY EASEMENT

This EASEMENT made this 20 day of 2014, by and between, Capps Holdings, LLC of the first part and the City of Wichita of the second part.

WITNESSETH: That the said first party, in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant and convey unto the said second party a perpetual right-of-way and easement for the purpose of constructing, maintaining, and repairing a drainage system and all other public utilities over, along, and under the following-described real estate situated in Sedgwick County, Kansas; to wit:

An easement 40 feet in width being the East 20 feet of Lot 1, Block 7 and the East 20 feet of the S1/2 of Vacated Lydia Avenue, lying North of and adjacent to said Lot 1 AND the West 20 feet of Lot 12, Block 7 and the West 20 feet of the S1/2 of Vacated Lydia Avenue, lying North of and adjacent to said Lot 12, Southwest Industrial Addition, Wichita, Sedgwick County, Kansas.

And said second party is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing drainage systems and all other public utilities.

IN WITNESS WHEREOF: The said first party has signed these presents the day and year first above written.

Capps Holdings, LLC

By: Ron Capps President

UP (2014-000)

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

(My Appointment Expires: 10/25/17)

Notary Public

A LORNA T. McGEHEE

Notary Public - State of Kansas
My Appt. Expires

APPROVED AS TO FORM:

STATE OF KANSAS

Gary Repenstorf, Director of Law

DRAINAGE & UTILITY EASEMENT

This EASEMENT made this day of QQQ This EASEMENT made this 30 day of 000, 2014, by and between, Hijos, LLC of the first part and the City of Wichita of the second part.

WITNESSETH: That the said first party, in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, does hereby grant and convey unto the said second party a perpetual right-of-way and easement for the purpose of constructing, maintaining, and repairing a drainage system and all other public utilities over, along, and under the followingdescribed real estate situated in Sedgwick County, Kansas; to wit:

An easement 40 feet in width being the East 20 feet of Lot 2, Block 6 and the East 20 feet of the N1/2 of Vacated Lydia Avenue, lying South of and adjacent to said Lot 2 AND the West 20 feet of Lot 3, Block 6 and the West 20 feet of the N1/2 of Vacated Lydia Avenue, lying South of and adjacent to said Lot 3, Southwest Industrial Addition, Wichita, Sedgwick County, Kansas.

And said second party is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, and repairing drainage systems and all other public utilities.

IN WITNESS WHEREOF: The said first party has signed these presents the day and year first above written.

Hijos, LLC

11002014-000ll

VAC2014 11: Drainage & Utility Easement2

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

(My Appointment Expires: 7/11/2017)

STATE OF KANSAS

Notary Public

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

COVENANT

KNOW ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED, <u>Capps Holding</u>, <u>LLC</u>, is the owner of the following described real estate, to-wit:

S1/2 of Lydia Ave., lying north of and adjacent to Lots 1 and 12, Block 7, Southwest Industrial Addition, Sedgwick County, Kansas.

NOW THERFORE, in consideration of receiving approval from the appropriate government authorities for the vacation of that part of the Vacated Street, as created by vacation case Vacation the undersigned agrees covenants that the above described portion of the vacated Lydia Ave. abutting Lots 1 and 12, Block 7, Southwest Industrial Addition, Sedgwick County, Kansas, shall be retained, held and bound together.

It is also understood that this covenant shall be binding upon the undersigned, his successors and assigns, and shall run with the land until such time as the said property is divided or platted into a different configuration.

Capps Holding, LLC

Ron Capps 4.28.14 President

STATE OF KANSAS) SEDGWICK COUNTY)

BE IT REMEMBERED, that on this <u>28th</u> day of <u>Cpril</u>, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Ron Capps, President of Capps Holding, LLC, Who is personally known to me to be the same person who executed this written document and such person duly acknowledged the execution of the same, for and on behalf of the corporation.

IN TESTEMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Lorna J. McDehel Notary Public

My App't Expires: 10/25/17

A LORNA T. McGEHEE

Notary Public - State of Kansas

My Appt. Expires

1000 - 405 Sau 188

COPY

COVENANT

KNOW ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED, <u>Hijos, LLC</u>, is the owner of the following described real estate, to-wit:

N1/2 of Lydia Ave., lying south of and adjacent to Lots 2 and 3, Block 6, Southwest Industrial Addition, Sedgwick County, Kansas.

NOW THERFORE, in consideration of receiving approval from the appropriate government authorities for the vacation of that part of the Vacated Street, as created by vacation case \(\frac{1}{2} \) in \(\frac{1}{2} \) in

It is also understood that this covenant shall be binding upon the undersigned, his successors and assigns, and shall run with the land until such time as the said property is divided or platted into a different configuration.

Hijos, LLC

stricia G. Koehler

STATE OF KANSAS)
SEDGWICK COUNTY)

BE IT REMEMBERED, that on this 30 day of ________, 2014, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Patricia G. Koehler, President of Hijos, LLC, Who is personally known to me to be the same person who executed this written document and such person duly acknowledged the execution of the same, for and on behalf of the corporation.

IN TESTEMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

My App't Expires: $\frac{7/11/2017}{}$

VACZOI4000

COPY

STORM SEWER EASEMENT

This EASEMENT made this Zee day of ______, 2014, by and between Capps Holding, LLC and Hijos, LLC parties of the first part and the City of Wichita of the second part.

WITNESSETH: That the said first parties, in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the said second party a perpetual right-of-way and easement for the purpose of constructing, maintaining, repairing a storm sewer over, along, and under the following-described real estate situated in Sedgwick County, Kansas; to wit:

That part of vacated Lydia Ave., described as beginning at the N.E. Corner of Lot 12, Block 7, Southwest Industrial Addition, Sedgwick County, Kansas; thence North, along the East line of said Block 7, extended North, 75 feet to a point 5 feet South of the S.E. Corner of Lot 3, Block 6, in said Southwest Industrial Addition; thence West, parallel with the South line of said Block 6, 789.1 feet more or less to a point on the West line of said Block 6, extended South; thence South, along the West line of said Block 6, extended South, 20 feet; thence East, parallel with the North line of said Block 6, 769.1 feet more or less to a point 20 feet West of the East line of said Block 7, extended North; thence South, parallel with the East line of said Block 6, 55 feet to the North line of Lot 12, in said Block 6; thence East, along the North line of said Lot 12, 20 feet to the Point of Beginning.

And said second party is hereby granted the right to enter upon said premises at any time for the purpose of constructing, operating, maintaining, repairing such storm sewer.

IN WITNESS WHEREOF: The said first party has signed these presents the day and year first above written.

Capps Holdings, LLC

Ron Capps VICE President

Hijos II C

Patricia G. Kachlar

President

VAC2014 11: Storm Sewer Easement

STATE OF KANSAS SEDGWICK COUNTY	,	SS:
a Notary Public, in and for the County a Holdings, LLC, personally known to me	ind State a to be the	day of Opril, 2014, before me, the undersigned, foresaid, came Ron Capps, President of Capps same person who executed the within instrument of xecution of the same, for and on behalf and as the act
IN TESTIMONY WHEREOF, I year above written.	have here	unto set my hand and affixed my official seal the day and
(My Appointment Expires: 10/25//	1	LORNA T. McGEHEE Notary Public LORNA T. McGEHEE Notary Public - State of Kansas Notary Public - State of Kansas
STATE OF KANSAS SEDGWICK COUNTY)	SS:
Public, in and for the County and State a personally known to me to be the same person duly acknowledged the execution limited partnership.	aforesaid, person won of the sa	came Patricia G. Koehler, President of Hijos, LLC, no executed the within instrument of writing and such ame, for and on behalf and as the act and deed of said unto set my hand and affixed my official seal the day and
(My Appointment Expires: 7/11/20	17	Cynthias Sprontle Notary Public
(My Appointment Expires.		
APPROVED AS TO FORM:		
Gary E. Rebenstorf, Director of Law	/	

VAC2014 11: Storm Sewer Easement

BEFORE THE CITY COUNCIL OF THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS

IN THE MATTER OF THE VACATION OF A PLATTED)	
STREET RIGHT-OF-WAY)	
)	
)	
GENERALLY LOCATED WEST OF MERIDIAN AVENUE)	VAC2014-00011
AND NORTH OF PAWNEE AVENUE)	
)	
)	
)	
MORE FULLY DESCRIBED BELOW)	

VACATION ORDER

NOW on this 10th day of June, 2014, comes on for hearing the petition for vacation filed by Capps Holding, LLC, c/o Ron Capps, president, and Hijos, LLC, c/o Patricia G Koehler, president, (abutting property owners), praying for the vacation of the described platted street right-of-way, to-wit:

All of the platted 80-foot wide Lydia Avenue, lying south of Lots 2 & 3, Block 6, and lying north of Lots 1 & 22, Block 7, extending from the west line of Custer Avenue, to the east line of Sheridan Avenue, all in the Southwest Industrial Addition, Sedgwick County, Kansas.

The City Council, after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, makes the following findings:

1. That due and legal notice has been given by publication, as required by law, in The Wichita Eagle on April 3, 2014, which was at least 20 days prior to the public hearing.

June 10, 2014 VAC2014-00011

- 2. No private rights will be injured or endangered by the vacation of the above-described platted street right-of-way and the public will suffer no loss or inconvenience thereby.
- 3. Two drainage and utility easements dedicated by separate instruments, two covenants binding and tying the vacated street right-of-way to the abutting properties, and a stormwater easement dedicated by separate instrument will be recorded with this Vacation Order at the Sedgwick County Register of Deeds.
 - 4. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- 5. No written objection to said vacation has been filed with the City Clerk by any owner or adjoining owner who would be a proper party to the petition.
 - 6. The vacation of the described platted street right-of-way should be approved.

IT IS, THEREFORE, BY THE CITY COUNCIL, on this 10th day of June, 2014, ordered that the described platted street right-of-way is hereby vacated. IT IS FURTHER ORDERED that the City Clerk shall send this original Vacation Order to the Register of Deeds of Sedgwick County.

ATTEST:	Carl Brewer, Mayor
Karen Sublett, City Clerk	
Approved as to Form:	
Gary Rebenstorf, Director of Law	

June 10, 2014 VAC2014-00011

City of Wichita City Council Meeting June 10, 2014

TO: Wichita Airport Authority

SUBJECT: Seaport Airlines, Inc.

Non-signatory Use and Lease Agreement

Wichita Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the agreement.

Background: The Wichita Airport Authority (WAA) has a uniform non-signatory use and lease agreement with the passenger carrying airlines serving Wichita Mid-Continent Airport. A non-signatory airline use agreement authorizes an airline to operate at the airport on a scheduled basis without having to lease space. However, a non-signatory airline will incur 25% higher fees and charges compared to a signatory airline. Currently, Allegiant Airlines is the only provided service through a non-signatory agreement.

<u>Analysis:</u> Seaport Airlines, Inc. (Seaport) is desirous of a non-signatory use and lease agreement with the WAA. The new agreement will allow Seaport to operate at Mid-Continent Airport, flights to and from Great Bend, Kansas. Service is to begin on June 16, 2014.

<u>Financial Considerations:</u> Seaport will be handled by American Airlines. The 2014 landing fee revenue and terminal use fees from Seaport is estimated to be approximately \$89,000 annually.

<u>Legal Considerations:</u> The agreement has been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the agreement and authorize the necessary signatures.

<u>Attachments:</u> Agreement

NON-SIGNATORY AIRLINE AIRPORT USE AND LEASE AGREEMENT

BY AND BETWEEN

WICHITA AIRPORT AUTHORITY

AND

SEAPORT AIRLINES, INC.

FOR

WICHITA MID-CONTINENT AIRPORT

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EXHIBIT E – Monthly Landed Weight/Fee Report

NON-SIGNATORY AIRLINE AIRPORT USE AND LEASE AGREEMENT

BETWEEN

WICHITA AIRPORT AUTHORITY

AND

SEAPORT AIRLINES, INC.

THIS AGREEMENT, made and entered into this <u>June 10, 2014</u>, by and between the WICHITA AIRPORT AUTHORITY, Wichita, Kansas (hereinafter referred to as "Authority") and SEAPORT AIRLINES, INC., an incorporation organized and existing under and by virtue of the laws of the State of Alaska (hereinafter referred to as "Airline") acting by and through its designated officers pursuant to its bylaws or a resolution of its Board of Directors;

WITNESSETH:

WHEREAS, Authority owns and operates the Wichita Mid-Continent Airport (hereinafter referred to as "Airport"); and

WHEREAS, Authority has the right to lease and license the use of property on Airport and has full power and authority to enter into this Agreement in respect thereof; and

WHEREAS, Airline is a corporation primarily engaged in the business of air transportation by aircraft for the carriage of persons, property, and mail; and

WHEREAS, Airline desires to use certain premises and facilities, and to exercise certain rights and privileges at Airport in connection with the operation of its Air Transportation System, and Authority is willing to agree to such use, rights and privileges as set forth herein; and

WHEREAS, the intent of the parties hereto is to enter into an agreement which will more definitively specify the rights and obligations of the parties with respect to the operation of Airport by Authority and the use and occupancy of Airport by Airline, and this Agreement is responsive to and in accordance with that intent;

NOW, THEREFORE, Authority and Airline for, and in consideration of, the covenants and mutual agreements hereinafter contained, do hereby covenant and agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 - Definitions

The following words, terms and phrases wherever used in this Agreement shall, for the purposes of this Agreement, have the following meanings:

Affiliate shall mean an Air Transportation Company that (1) shares a reservation code with or is a wholly-owned subsidiary of Airline or otherwise under contract with Airline, and (2) operates under essentially the same trade name at the Airport, and (3) uses essentially the same livery as Airline, and (4) is a part of and feeds into the Airline's connection system.

Agreement shall mean this Non-Signatory Airline Airport Use and Lease Agreement between Authority and Airline, as the same may be amended from time to time.

Air Transportation Company shall mean a company engaged in the business of scheduled or nonscheduled commercial transportation by air of persons, property, mail, and/or cargo.

Aircraft Parking Apron shall mean that part of Ramp Area immediately adjacent to Terminal that is used for the parking of aircraft and support vehicles and the loading and unloading of passengers, baggage, and other mail or cargo, the boundaries of which are shown in Exhibit "B" attached hereto.

Airfield shall mean those portions of Airport provided for the landing, take-off and taxiing of aircraft, including without limitation approach and turning zones, aviation or other easements, runways, taxiways, runway and taxiway lights, and other appurtenances in connection therewith.

Airline Premises shall mean Exclusive Use Premises, Preferential Use Premises and Joint Use Premises as hereinafter defined.

Airport shall mean the Wichita Mid-Continent Airport owned and operated by The Wichita Airport Authority, the current boundaries of which are shown on Exhibit "A" attached hereto.

Airport System shall mean Wichita Mid-Continent Airport and Colonel James Jabara Airport.

Air Transportation System shall mean that system operated by Airline for the commercial transportation of persons, property and mail by air.

Director shall mean the Director or Acting Director of Airports, and shall include such person or persons as may from time to time be authorized in writing by the Director to act for the Director with respect to any or all matters pertaining to this Agreement.

Enplaned Passengers shall mean all (i) originating; (ii) on-line transfer; and (iii) off-line transfer revenue passengers boarded at the Airport.

Exclusive Use Premises shall mean Terminal space leased to Airline for its exclusive use as shown on Exhibit "B," attached hereto, as such may be amended from time to time.

Gate Position shall mean Airline's passenger gate(s), including Airline's Aircraft Parking Apron, holdroom, passenger loading bridge(s), if any, and appurtenant furnishings in and about the Terminal that are reasonably necessary for the use thereof; provided, however, Gate Position shall specifically exclude any space leased by Airline under the Terminal concourses.

Host Airline shall mean a Signatory Airline accommodating an Affiliate within its Airline Premises.

Joint Use Premises shall mean those Terminal areas assigned to two or more Scheduled Air Carriers, as shown on Exhibit "B," attached hereto.

Maximum Gross Landed Weight shall mean the maximum gross certificated landing weight in one thousand pound units for which each aircraft operated by Airline is certified by the Federal Aviation Administration ("FAA"), or any successor agency thereto.

Non-Participating Airline shall mean an Air Transportation Company which does not have an Agreement with the Authority for use of the Airport in the provision of commercial air transportation services.

Non-Revenue Landing shall mean any aircraft landing by Airline at Airport for which Airline receives no revenue, and shall include irregular and occasional ferry, test, courtesy, inspection, or other similar flights.

Non-Signatory Airline shall mean any airline using the Airport which executed a Non-Signatory Airline Airport Use and Lease Agreement.

Preferential Use Premises shall mean Aircraft Parking Apron(s), hold room(s) and Authority owned passenger loading bridge(s), if any, assigned to Airline, as set forth in Section 3.1, and to which Airline shall have preferential use, defined herein as the unrestricted higher and continuous priority over all other users, subject to the provisions of Article XIV herein. The Director may, with notice appropriate under the circumstances, authorize another Air Transportation Company pursuant to Article XIV to utilize Airline's hold rooms, loading bridges, and Aircraft Parking Apron when such use does not conflict with Airline's scheduled flight activities, including a period of forty-five (45) minutes after any of Airline's scheduled departure times and forty-five (45) minutes prior to any of Airline's scheduled arrival times and during Airline's aircraft parking overnight, or for the scheduled flight activities of an airline with which Airline has a Code Share Airline agreement, approved subleases, or handling agreements.

Ramp Area shall mean the aircraft parking and maneuvering areas adjacent to Terminal, and shall include within its boundaries all Aircraft Parking Aprons.

Requesting Airline shall mean a Scheduled Air Carrier desiring to provide new or expanded commercial passenger air transportation service to and from Airport, and which is unable to obtain adequate Aircraft Parking Apron and/or Terminal space from Authority.

Revenue Landing shall mean an aircraft landing by Airline at Airport in conjunction with a flight for which Airline makes a charge or for which revenue is derived for the transportation by air of persons, property or mail, but Revenue Landings shall not include any landing of an aircraft which, after having taken off from Airport and without making a landing at any other airport, returns to land at Airport because of meteorological conditions, mechanical or operating causes, or any other reason of emergency or precaution.

Scheduled Air Carrier shall mean an Air Transportation Company performing or desiring to perform scheduled commercial air transportation service over specified routes to and from Airport, and holding any necessary authority to provide such transportation from the appropriate federal and state agencies. Affiliates of Host Airlines providing scheduled air transportation to and from Airport, together with the Host Airline, shall be considered as one Air Carrier for the sole purpose of calculating and assessing fees and charges hereunder.

Signatory Airlines shall mean those airlines which provide scheduled air transportation to and from the Airport and which have executed substantially similar agreements to this Agreement, including term, with Authority for the lease, use, and occupancy of facilities at the Airport, including the lease of at least one (1) holdroom and associated Aircraft Parking Apron.

Terminal shall mean the airline terminal building owned and operated by Authority at Airport, as shown on Exhibit "A" hereof.

Section 1.2 – Construction

- 1.2.A. Additional words and phrases used in this Agreement but not defined herein shall have their usual and customary meaning.
- 1.2.B. Unless the context clearly indicates otherwise, words used in the singular include the plural, and words used in the plural include the singular.

ARTICLE II TERM

Section 2.1 - Initial Term

The term of this Agreement shall become effective on the Effective Date and shall continue on a month-to-month basis thereafter until terminated as provided in this Agreement.

Section 2.2 – Termination by Either Party.

This Areement may be terminated with or without cause by either party upon not less than thirty (30) calendar days written notice to the other. In addition, (a) this Agreement may be terminated pursuant to Article X, and (b) in the event the Director determines that termination is necessary to protect the public health, safety, or welfare, this Agreement may be terminated by the Director upon such notice as the Director deems appropriate under the circumstances.

Section 2.3 – Ongoing obligations and Liabilities.

Termination of this Agreement shall not relieve the Airline of any obligations or liabilities that shall have accrued on or prior to the effective termination date. Upon the expiration or termination of this Agreement, Airline shall: (i) immediately cease all operations at the Airport; and (ii) pay in full all fees and other amounts then due and owing to Authority pursuant to the terms of this Agreement.

Section 2.4 – Airline's Cessation of Business.

In the event that Airline ceases to operate at the Airport or fails to respond within five (5) calendar days to written notice from the Authority requesting confirmation of Airline's intent to continue operating at the Airport, then the Director shall have the right to immediately terminate this Agreement without further notice.

ARTICLE III PREMISES

Section 3.1 - Airline Premises

- 3.1.A. Authority does hereby lease and demise to Airline, and Airline does hereby lease and accept from Authority, Exclusive Use Premises, Preferential Use Premises, and Joint Use Premises, as set forth on Exhibit "B".
- 3.1.B. Authority and Airline may, from time to time, by written agreement, add to or delete space from Airline Premises. Authority shall not permit deletion of space unless needed by Airport for its own use or for lease to another tenant requesting such space. Exhibit "B" shall be revised as of the effective date of such additions or deletions to reflect agreed upon additions or deletions of space.
- 3.1.C. Notwithstanding the above Paragraph 3.1.B., Authority shall also have the right upon 30 days advance written notice or such other timeframe which may be reasonable and agreed to by Airline and Authority to relocate Airline to comparable, alternative premises that are ready for beneficial occupancy if such relocation is necessary to ensure the efficient use of all Terminal areas, with due recognition of the specific needs of each carrier, including Airline, operating at the Airport. In the event Airline is relocated, in whole or in part, appropriate changes to Exhibit "B" shall be made.
- 3.1.D. All space added to, or deleted from, Airline Premises pursuant to this Section 3.1 shall be subject to all the terms, conditions, and other provisions of this Agreement and Airline shall pay to Authority all rentals, fees and charges applicable to such additional Airline Premises in accordance with the terms of this Agreement.
- 3.1.E.(1) The Authority and Airlines recognize that the use of certain Joint Use Space as set forth in Exhibits "B" of the Agreement require ingress and egress through Airline Preferential Use Premises. Airline shall make ingress and egress to such Joint Use Space available to passengers, other Airline personnel, and Authority personnel when reasonably required for the efficient and convenient movement of passengers, personnel, and objects. In recognizing the right to such use by others, the parties agree that the Airline shall retain the reasonable and unrestricted higher and continuous priority over other users on its Preferential Use Premises.
- 3.1.E.(2) During the ingress and egress of Airline Preferential Use Premises by passengers, other Airline personnel and Authority personnel pursuant to this Section, Airline shall be relieved of its obligation under this Agreement to indemnify and save harmless Authority, its agents and employees, its successors and assigns, with regard to any claim for damages or personal injury arising out of or in connection with said passenger, other Airline personnel and Authority's personnel using Airline's Preferential Use Premises unless such damage or personal injury is proximately caused by the negligence of Airline, its agents, employees, licensee, or those under its control who have come upon Airline Preferential Use Premises in connection with Airline's occupancy hereunder.

Section 3.2 - Employee Parking

Authority shall make available or cause to be developed an area or areas at the Airport as common parking facilities for personnel employed at the Terminal, including Airline personnel, subject to applicable charges for such parking facilities as set forth in Paragraph 6.4.C. herein.

Section 3.3 - Authority Fuel Facilities

Airline shall have the right to utilize the fueling facilities, equipment, and appurtenances, including the tank farm owned by the Authority, for the receiving, storing, and dispensing of aviation fuel, subject to (i) reasonable rules and regulations established by the Director; (ii) the payment of charges for such use as set forth in Paragraph 6.4.A. of this Agreement; (iii) the terms of existing agreements between the Authority and any designee operating the Authority's facilities; and (iv) the execution of a separate agreement with Authority if Airline directly utilizes the Authority fuel facilities without engaging the services of Authority or its designee.

ARTICLE IV USE OF AIRPORT AND RELATED FACILITIES

Section 4.1 - Airline Rights and Privileges

Airline shall have the right, in addition to all rights granted elsewhere in this Agreement, to use areas of Airport as designated in this Agreement for the following purposes:

- 4.1.A. The operation of its Air Transportation System for the carriage of persons, property and mail, including all activities reasonably necessary to such operations.
- 4.1.B. The landing, taking off, flying over, taxiing, towing, parking, loading and unloading, conditioning and servicing of aircraft of Airline; and, in areas designated by Authority, the extended parking, servicing, loading or unloading, storage or maintenance of Airline's aircraft, subject to availability of space and to such reasonable charges and regulations as Authority may determine for areas not part of Airline Premises. Such rights shall extend to the aircraft or other equipment of any other aircraft operator with which Airline has an agreement in accordance with Article XIII.
- 4.1.C. The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel, and the sale, handling, and providing of mail, freight, and express services.
- 4.1.D. The training at Airport of personnel in the employ of or to be employed by Airline, and the testing of aircraft and other equipment being utilized on the Airport in the operation of its Air Transportation System, provided that such training and testing is incidental to the use of Airport in the operation by Airline of its Air Transportation System, does not include flight training between the hours of 10:00 p.m. and 7:00 a.m., and will not unreasonably hamper or interfere with the use of Airport and its facilities by others entitled to use of the same. In the event the number of training and testing flights by Airline exceeds ten (10) percent of Revenue Landings by Airline in any one calendar month, then Airline shall pay for such excess flights landing fee charges calculated using the then current rates established in this Agreement for Revenue Landings.
- 4.1.E. The sale, disposition or exchange of Airline's aircraft, engines, accessories, gasoline, oil, grease, lubricants, fuel and other equipment, or supplies, subject to any limitations contained herein, and provided that such rights shall not be construed as authorizing the conduct of a separate business by Airline, but shall only permit Airline to perform such functions as are incidental to the operation of its Air Transportation System. Airline shall not sell aviation fuels or propellants except (i) to a wholly owned subsidiary company, parent company, or a successor company; (ii) for use in aircraft of others which are being used solely in the operations of Airline; or (iii) to others when a comparable grade and type of fuel desired by others is not available at Airport except from Airline.
- 4.1.F. The purchase at the Airport or elsewhere, of fuels, lubricants and any other supplies and services, from any person or company, subject to paragraph 4.1.E. and to the Authority's right to require that each provider of services and/or supplies to Airline secures a permit from Authority

to conduct such activity at the Airport, pays required fees, and abides by all reasonable rules and regulations established by Authority. No discriminatory limitations or restrictions shall be imposed by Authority that interfere with such purchases; provided, however, nothing herein shall be construed to permit Airline to store aviation fuels at the Airport. The granting of the right to store aviation fuels shall be subject to the execution of a separate agreement between Airline and Authority.

- 4.1.G. The servicing by Airline, or its suppliers, of aircraft and other equipment being utilized at the Airport on Aircraft Parking Aprons or such other locations as may be designated by the Director.
- 4.1.H. The loading and unloading of persons, property, and mail by motor vehicles or other means of conveyance as Airline may desire or require in the operation of its Air Transportation System, at locations designated by Authority. Airline may designate the particular carrier or carriers which are legally authorized to conduct such services in the City of Wichita and which may transport Airline's employees, property, and mail to, from, and on Airport; provided, however, Authority reserves the right to require such carrier or carriers to secure a permit from Authority to conduct such activity at Airport and to abide by all reasonable rules and regulations established by Authority.
- 4.1.I. The installation and maintenance at its sole cost and expense of identifying signs in Airline's Exclusive Use Premises. The general type and design of such signs shall be harmonious and in keeping with the pattern and decor of the Terminal areas; provided, however, that Authority shall permit Airline to install on the walls behind ticket counters leased by Airline, if any, identifying and company logo signs customarily installed by Airline in such areas at comparable airport facilities. All such signs of whatever number, size, design, color, nature or location shall require the written approval of Director, not to be unreasonably withheld prior to their installation.
- 4.1.J. The installation, maintenance and operation of such radio, communication, computer, meteorological and aerial navigation equipment and facilities, in, on and about the Airline Premises as may be necessary or convenient in the opinion of Airline for operation of its Air Transportation System; provided, however, that the location and installation of such equipment and facilities shall require the prior written approval of Director, not to be unreasonably withheld, and further provided that the placement and type of installations authorized hereunder shall not interfere with Airport navigational aids or with similar rights granted to other tenants or governmental agencies. In the event of such interference, the Director may require removal, relocation, or modification at the sole cost of Airline to eliminate such interference.
- 4.1.K. Such rights of way as may reasonably be required by Airline for communications, computer equipment, teletype, telephone, interphone, pneumatic tubes, conveyer systems and power and other transmission lines in and between the Terminal and other areas of Airport. The location of such rights of way shall be designated by Director.
- 4.1.L. The installation of personal property, including furniture, furnishings, supplies, machinery and equipment, in Airline Premises as Airline may deem necessary or prudent for the

operation of its Air Transportation System, with title to such personal property to remain with Airline in accordance with the terms of this Agreement.

- 4.1.M. The construction of modifications, finishes and improvements in Airline Premises as Airline may deem necessary or prudent for the proper operation of its Air Transportation System, in accordance with Article VII of this Agreement.
- 4.1.N. Ingress to and egress from the Airport and Airline Premises for Airline's officers, employees, agents, invitees, passengers, suppliers of materials, furnishers of services, aircraft, equipment, vehicles, machinery and other property. Such rights shall be subject to TSR Part 1542, and the Authority's right to establish rules and regulations governing (i) the general public, including Airline's passengers, and (ii) access to non-public areas at the Airport by Airline's employees, suppliers of materials and furnisher of services; provided, however, any such rules and regulations of the Authority shall not unreasonably interfere with the operation of Airline's Air Transportation System. Further, Authority reserves the right to, from time to time, temporarily or permanently restrict the use of any roadway or other area at the Airport. In the event of such restrictions, and if necessary, Authority shall ensure the availability of a reasonable equivalent means of ingress and egress.
- 4.1.O. The installation of a limited number of soft drink vending machines and snack vending machines, subject to the prior written approval of Director, in the non-public, Exclusive Use Premises of Airline for the exclusive use of Airline's employees and agents.
- 4.1.P. The rights and privileges granted to Airline pursuant to this Article IV may be exercised on behalf of Airline by other Signatory Airlines or contractors authorized by Authority to provide such services at the Airport, subject to the prior written approval of Authority and further subject to all laws, rules, regulations and fees and charges as may be applicable to the activities undertaken.
- 4.1.Q. Airline may, on behalf of any other Air Transportation Company or any Affiliate Airline, exercise any of the rights granted Airline herein, so long as Airline is concurrently exercising those same rights in the operation of Airline's own Air Transportation System at the Airport. This right is subject to other provisions of this Agreement with respect to Authority rules and regulations.

Section 4.2 - Exclusions and Reservations

4.2.A. Authority reserves the right to install or cause to be installed advertising and revenue generating devices, including vending machines, in Joint Use Premises; provided, however, that such installation shall not unreasonably interfere with Airline's operations authorized hereunder or substantially diminish the square footage contained in Airline Premises. Authority further reserves the right to install pay telephones in any part of Terminal. Authority shall be entitled to all income generated by such telephones and devices and to reasonable access upon Airline Premises to install or service such telephones and devices.

- 4.2.B. Director may prohibit the use of the Landing Area by any aircraft operated or controlled by Airline which exceeds the design strength or capability of the Landing Area as described in the current Federal Aviation Administration approved Airport Layout Plan or other engineering evaluations performed subsequent to the then current Airport Layout Plan.
- 4.2.C. Airline shall use its best efforts to promptly remove any of its disabled aircraft from runways, taxiways, aprons and Aircraft Parking Apron (the latter only if needed by Authority for operational purposes in accordance with Article XIV) and shall place any such disabled aircraft only in such storage areas as may be designated by Authority and may store such disabled aircraft only upon such terms and conditions as may be established by Authority. In the event Airline shall fail to remove any of its disabled aircraft as expeditiously as possible, Authority may, but shall not be obligated to, cause the removal of such disabled aircraft at Airline's cost.
- 4.2.D. Airline shall not do or permit to be done anything that may interfere with the effectiveness or accessibility of the drainage, sewerage, water, communications, or fire protection systems or any other part of the utility, electrical, or other systems installed or located from time to time at Airport.
- 4.2.E. Airline shall not, within its reasonable control, do or permit to be done anything either by act or failure to act that shall cause the cancellation or violate the provisions of any policy of insurance for Airport, or any part thereof, or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If Airline shall do or permit to be done anything either by act or failure to act that shall cause an increase in the premiums for insurance for Airport, or any part thereof, then Airline shall immediately upon demand by Director pay the amount of such increase. If such Airline act or failure to act shall cause cancellation of any policy, then Airline shall immediately upon notification by Director take such action as is necessary to cause reinstatement of said insurance.
- 4.2.F. The rights and privileges granted to Airline under this Article to contract with third parties for obtaining services and materials are subject to restrictive agreements, franchises, licenses, and other rights previously granted by Authority to fixed base operators, ground transportation carriers and other providers of services and materials.
- 4.2.G. No services are permitted by Airline in the Aircraft Parking Apron other than those incidental to the immediate preparation of aircraft for departure and servicing after arrival, such services to include: loading and unloading of passengers; baggage and supplies; fueling; inspection, and interior cleaning. Minor and emergency maintenance service may be performed by Airline or vendors selected by Airline only when it can be performed within the time permitted by the rules and regulations of Authority relating to the use of the Aircraft Parking Apron area.
- 4.2.H. Airline shall not be prohibited from providing customary in-flight catering services to its passengers and flight crews for consumption aloft.
- 4.2.I. Authority reserves the right to establish rules and regulations governing access of the general public, including Airline's passengers, to public areas in the Terminal; provided, however, any such rules and regulations shall not unreasonably interfere with the operation of

Airline's Air Transportation System, or alter the access rights provided for elsewhere in this Agreement.

- 4.2.J. The rights granted by this Agreement shall not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of Airport.
- 4.2.K. Any and all rights and privileges not granted to Airline in this Agreement are hereby reserved for and to Authority.

Section 4.3 – Curbside Check-In

Airline, either alone or in conjunction with other Scheduled Air Carriers or through a nominee, may provide curbside check-in. Authority will consider a vendor arrangement, in the event one or more Signatory Airlines execute a written agreement to pay for the cost of facilities and services related to curbside check-in.

ARTICLE V MAINTENANCE AND OPERATION OF AIRPORT

Section 5.1 - General

- 5.1.A. Authority agrees that it (i) will with reasonable diligence prudently develop, improve, and at all times reasonably maintain and operate Airport with adequate qualified personnel and keep Airport in reasonably good repair including, without limitation, the Terminal (except as set forth in Paragraphs 5.1.B. and 5.1.C.), Landing Area, Ramp Area, and all appurtenances, facilities and services now or hereafter connected therewith as the same relate to Airline's Air Transportation System; (ii) will use its best efforts to keep Airport and its aerial approaches free from obstruction and interference for the safe and proper use thereof by Airline; and (iii) will develop, maintain and operate Airport in all respects in a manner at least equal to comparable United States airports of substantially similar size, use and activity except for conditions beyond the control of Authority. Notwithstanding the above, Authority shall not be responsible for snow and debris removal within the building safety line in the Terminal area. Authority shall not be liable to Airline for temporary failure to furnish all or any of such services to be provided by Authority, whether due to mechanical breakdown or for any other causes beyond the reasonable control of Authority.
- 5.1.B. Airline will at all times maintain in a neat, orderly, sanitary, and presentable condition, and will provide custodial services in designated areas of Airline Exclusive Use Premises and in accordance with the maintenance and operation responsibilities provided for herein. Airline shall cause to be removed from such spaces designated herein, at Airline's own expense, all waste, garbage and rubbish and agrees not to deposit same on any part of Airport, except that Airline may deposit same temporarily in its Exclusive Use Premises or in space designated by Authority in connection with collection for removal. Should Airline refuse or neglect to maintain designated areas as herein provided, Authority, upon notice to Airline providing a reasonable amount of time for Airline to remedy such problem, shall have the right to perform such maintenance on behalf of and for Airline. Any costs for such maintenance shall be paid for by Airline no later than twenty (20) days following demand by Director for such payment at Authority's costs plus twenty (20) percent.
- 5.1.C. Responsibilities for maintenance, cleaning and operation of facilities shall be as set forth on Exhibit "C".

ARTICLE VI RENTALS, FEES, AND CHARGES

Airline shall pay Authority rentals for use of Airline Premises, and fees and charges for the other rights, licenses, and privileges granted hereunder during the term of this Agreement, and shall file periodic reports as specified herein.

Section 6.1 - Landing Fee Charges and Per Turn Charges

- 6.1.A. Airline shall pay to Authority within twenty (20) days following the end of each calendar month, without demand or invoicing, landing fee charges for Revenue Landings for the preceding month and per turn charges, including payment for any Non-Participating Airlines handled by the Airline, at the rates and in the amount calculated in accordance with the Authority's Schedule of Fees and Charges.
- 6.1.B. As set out in Section 6.7.A., Airline shall provide a copy of its applicable Monthly Statistical Report (Exhibit "D") and Monthly Landed Weight/Fee Report (Exhibit "E"), showing the basis for its landing fee and per turn charges, including those of the Non-Participating Airlines.

Section 6.2 - Rentals for Exclusive Use Premises

6.2.A. Airline shall pay to Authority in advance, on the first day of each month, without demand or invoicing rentals for Airline's Exclusive Use Premises at the rates and in the amounts calculated in accordance with the Authority's Schedule of Fees and Charges.

Section 6.3 - Rentals for Preferential Use Premises

Airline shall pay to Authority in advance, on the first day of each month, without demand or invoicing, rentals for Preferential Use Premises at the rates and in the amounts calculated in accordance with the Authority's Schedule of Fees and Charges.

Section 6.4 - Other Charges

Other charges payable by Airline, which shall be paid by Airline to Authority within twenty (20) days following receipt by Airline of billing therefore, in addition to those specified elsewhere in this Agreement, shall be as follows:

- 6.4.A. Fuel Facility Charges. In the event Airline purchases or otherwise obtains fuels or lubricants pumped or processed through facilities, equipment, or appurtenances owned or operated by Authority or its designee, including the tank farm owned by Authority, then in such event Airline shall pay charges as determined by Authority's Schedule of Fees and Charges.
- 6.4.B. Equipment Parking Charges. Charges for apron space on which Airline parks or stores equipment utilized in the operation of Airline's air carrier operations.

- 6.4.C. Other Fees and Charges. In addition to the foregoing, Authority expressly reserves the right to assess and collect the following:
 - (a) Airport shall have the right, pursuant to FAR Part 158, to collect and expend passenger facility charges (PFCs).
 - (b) Reasonable and non-discriminatory fees for concessions and other services provided by Airline for others or for Airline by others if such services or concessions would otherwise be available from a concessionaire or licensee of Authority.
 - (c) Reasonable and non-discriminatory fees and charges for services or facilities not enumerated in this Agreement, but provided by Authority and accepted by Airline.
 - (d) Reasonable and non-discriminatory fees and charges for use of the common use areas within the Terminal.
 - (e) A pro rata share of any charges for the provision of any services or facilities which Authority is required to provide by any governmental entity having jurisdiction over the Airport.
 - (f) A reasonable fee for any employee parking area or areas provided at the Airport.
 - (g) A reasonable fee for the use of any Authority owned property or equipment or the provision of services or facilities provided by Authority at the request of Airline.
 - (h) Charges for items or activities such as badges, extraordinary electrical usage and ramp permit fees shall be assessed by Authority and paid by Airline. To the extent practical, the Authority shall directly meter electrical usage.
 - (i) Any other reasonable and non-discriminatory fee or charge established by Authority from time to time.

Section 6.5 - Partial Month Charges

In the event the beginning or termination date with respect to any of the premises and facilities leased hereunder falls on any date other than the first and last days, respectively, of a calendar month, the applicable rentals, fees and charges for that month shall be paid for said month on a pro rata basis according to the number of days actually occupied during that month.

Section 6.6 - Late Payments

In the event Airline fails to make payment within twenty (20) days of the dates due as set forth in this Article VI, then Airline shall pay to Authority a monthly service charge from the date each payment was originally due equal to eighteen (18%) percent per annum on any such overdue amount, and if Airline fails to make payment within ten (10) days after written notice from Authority to Airline that such payments are late. Airline shall also pay reasonable administrative

costs and attorneys' fees incurred by Authority in attempting to obtain payment if Airline fails to make payment within thirty (30) days after written notice referenced above.

Section 6.7 - Information to be Supplied by Airline

- 6.7.A. Not later than five (5) working days after the end of each month, Airline shall file with Authority a written report on forms provided by Authority (Exhibit "D") for activity conducted by Airline during said month.
- 6.7.B. Not later than five (5) working days after the end of each month, separate reports shall be filed by Airline with Authority for any aircraft flights, scheduled or nonscheduled, handled by Airline for Non-Participating Airlines.
- 6.7.B. In the event Airline fails to submit the reports required by this Section 6.7 for the then current month by the tenth (10th) day of the succeeding month, Authority shall base its current rentals, fees and charges upon the most recent data transmitted by Airline to Authority, with such charges to be adjusted as necessary on the next succeeding payment date. If statistical data to be submitted by Airline continues to be unavailable in the next succeeding month, Authority shall develop estimates as to Airline's monthly activity for use in the calculation of Airline's rentals, fees and charges.
- 6.7.C. Airline shall at all times maintain and keep books, ledgers, accounts or other records at the Airport or at its headquarters offices reflecting the traffic statistics to be reported hereunder. Such books, ledgers, accounts and records shall be available for examination by Authority or its duly authorized representative during all reasonable business hours. If such books, ledgers, accounts or other records are not maintained at the Airport, Airline shall promptly furnish the Authority or its duly authorized representative with all information reasonably requested.
- 6.7.D. The acceptance by Authority of any Airline payment shall not preclude Authority from verifying the accuracy of Airline's reports on which Airline's rentals, fees and charges are based, and shall not be construed as a waiver of interest penalty due, if any.

Section 6.8 - Security for Payment

- 6.8.A. To provide security for the rentals, fees and charges due hereunder, Airline shall comply with either of the following two options within fourteen (14) days following the execution of this Agreement.
 - 6.8.A.(1) Post with the Authority a surety bond, to be maintained throughout the term hereof. Such bond shall be issued by a sound indemnity company and shall be in a form and content satisfactory to Authority.
 - 6.8.A.(2) Deliver to Authority an irrevocable letter of credit drawn in favor of Authority upon a bank satisfactory to Authority. Said irrevocable letter of credit shall be kept in force throughout the term of this Agreement and shall contain terms and conditions satisfactory to Authority.

- 6.8.B. For purposes of this Section 6.8, any surety bond posted by Airline, or irrevocable letter of credit provided by Airline, shall be conditioned on the satisfactory performance of all terms, conditions and covenants contained herein with respect to rentals, fees and charges during the term hereof.
- 6.8.C. The security for payments shall be in an amount equal to two months' rentals for Exclusive Use Premises and Preferential Use Premises, plus estimated landing fees and per turn charges for the same period, all as reasonably estimated by the Director. The Authority may, upon ten business days notice to the Airline, require an increase in the amount of security deposit up to four additional months anticipated payments if, upon a review of the Airline's payment or performance history at the Airport, the authority determines an increase should be required.
- 6.8.D. In the event of any failure by Airline to pay when due any amounts payable under this Agreement, or upon any other default hereunder, then in addition to any other rights and remedies available to Authority at law or in equity, Authority shall be entitled to draw against the full amount of the Security Deposit and apply same to all amounts owed. Upon notice of any such draw, Airline shall immediately replenish or replace the Security Deposit with cash, a new Letter of Credit or a new Bond, as applicable, up to the full amount of the Security Deposit required hereunder. If a Letter of Credit is posted, then the term and all renewal terms of the Letter of Credit shall be for a period of not less than one year, and the Letter of Credit shall be kept in full force and effect throughout the term of this Agreement, and for a period of six months following the termination date of this Agreement. If a Bond is posted, then the Bond shall be kept in full force and effect throughout the term of this Agreement and for a period of six months following the termination date of this Agreement.
- 6.8.E. Not less than 60 calendar days prior to any expiration date of the Letter of Credit or Bond, the Airline shall submit evidence in form satisfactory to Authority that said security instrument has been renewed. A failure to renew the Letter of Credit or Bond, as applicable, or to increase the amount of same if required by the Authority shall (i) entitle the Authority to draw down the full amount of such Security Deposit, and (ii) constitute an Event of Default of this Agreement, entitling Authority to exercise all available remedies.

Section 6.9 - Security Deposit Waiver

6.9.A. Notwithstanding the above Sections 6.8, Authority shall have the right to waive such Security Deposit requirements for any Airline which has provided regularly scheduled passenger flights to and from the Airport for eighteen (18) consecutive months without history of untimely payments for rentals, fees and charges prior to the Effective Date of its agreement. Any such waiver by Authority shall be conditioned upon said Airline having provided regularly scheduled passenger flights at six (6) other airports with activity levels and characteristics similar to the Airport during the most recent eighteen (18) consecutive month period, without committing any material default under the terms of the respective lease and use agreements at each of the six (6) facilities, and without any history of untimely payments for rentals, fees, and charges. The burden shall be on Airline to demonstrate to Authority its compliance with these requirements at the six (6) other airports.

- 6.9.B. In the event Airline fails to make payment of undisputed rentals, fees and charges within sixty (60) days of the dates due as set forth in Article VI, then Airline shall provide Authority with the required Security Deposit within twenty (20) days from its receipt of such written notice and shall thereafter maintain such Security Deposit.
- 6.9.C. Upon the occurrence of any Airline act or omission that is an event enumerated in Section 10.4, or upon Airline 's election to assume this Agreement under Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984, or any successor statute, as such may be amended, supplemented, or replaced, Authority, by written notice to Airline given at any time within ninety (90) days of the date such event becomes known to Authority, may impose or reimpose the requirements of Section 6.8 on Airline. In such event, Airline shall provide Authority with the required Security Deposit within twenty (20) days from its receipt of such written notice and shall thereafter maintain such Security Deposit.
- 6.9.D. If Airline shall fail to obtain and/or keep in force such Security Deposit required hereunder, such failure shall be grounds for immediate cancellation of this Agreement pursuant to Article X and any accrued charges shall be as set forth by the Authority's Non-Participating Schedule of Fees and Charges. Authority's rights under this Section 6.9 shall be in addition to all other rights and remedies provided to Authority under this Agreement.

ARTICLE VII AIRPORT IMPROVEMENTS

Section 7.1 - General

The parties hereto recognize that capital expenditures to preserve, protect, enhance, expand, or otherwise improve Airport or any part thereof, may be required during the term of this Agreement. Any such capital expenditures shall be subject to the provisions of this Article VII.

Section 7.2 - Alterations and Improvements by Airline

- 7.2.A. Whenever consistent with this Agreement, Airline shall have the right to construct and install, at its sole expense, improvements in its Airline Premises as Airline deems to be necessary for its operations; provided, however, that the plans and specifications, location, and construction schedule for such improvements shall be approved by Director in writing prior to the commencement of any and all such construction or installation. Additionally, prior to the commencement of any such improvements, Airline shall obtain insurance and/or other protection of such types and in such amounts as reasonably deemed necessary by Director and shall submit evidence that such insurance has been obtained to Director. Any work associated with such construction or installation shall not interfere with the operation of the Terminal or Ramp Area. Airline shall deliver to Director reproducible "as builts", in electronic form, of Airline improvements and additions no later than thirty (30) days following the substantial completion of any such improvements and additions.
- 7.2.B. Any construction or installation shall be at the sole risk of Airline and shall be in accordance with all applicable state and local codes and laws and subject to inspection by Director.
- 7.2.C. All improvements made to Airline Premises and additions and alterations thereto made by Airline shall immediately become the property of Authority; provided, however, that any trade fixtures, signs and other personal property of Airline not permanently affixed to Airline Premises shall remain the property of Airline unless otherwise specified according to the provisions of Article XII.
- 7.2.D. Airline shall require contractors to furnish satisfactory evidence of statutory Workers' Compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance, and physical damage insurance, on a Builder's Risk form with the interest of Authority endorsed thereon, in such amounts and in such manner as Director may reasonably require. Director may require additional insurance for any alterations or improvements approved hereunder, in such limits as Director reasonably determines to be necessary.
- 7.2.E. Any removal by Airline of property installed by Airline under the terms of this Agreement shall be accomplished pursuant to Article XII and shall require the written consent of Director prior to such removal, which shall not be unreasonably withheld.

ARTICLE VIII DAMAGE OR DESTRUCTION

Section 8.1 - Damage to Airport Facilities.

Airline shall be responsible for all damage to the Airport caused by the Airline, its agents, employees, contractors, subcontractors, or invitees, including but not limited to, damage to terminal areas, ramp and taxiway areas, engine run-up areas, runways, and all areas where any activities are conducted by Airline.

Section 8.2 - Authority not Liable for Damage to Airline's Property.

Authority shall not be liable to Airline for damage to Airline's property from any cause whatsoever, including without limitation, any act of negligence of any tenants, occupants, or other users of the Airport or any other person or from any cause whatsoever unless caused by the sole negligence of Authority, its agents, servants or employees. Airline shall have the right, however, to claim and recover its damages from any third party who may be liable therefor.

ARTICLE IX INDEMNIFICATION AND INSURANCE

Section 9.1 – Indemnification

- 9.1.A. Airline agrees to indemnify, save, hold harmless, and defend Authority, its Council persons, its officials, agents and employees, its successors and assigns, individually or collectively, from and against all liability for any claims and actions and all reasonable expenses incidental to the investigation and defense thereof, in any way arising out of or resulting from any acts, omissions or negligence of Airline, its agents, employees, licensees, successors and assigns, or those under its control; in, on or about Airline Premises or upon Airport Premises; or in connection with its use and occupancy of Airline Premises or use of Airport; provided, however, that Airline shall not be liable for any injury, damage, or loss occasioned by the negligence or willful misconduct of Authority, its agents or employees. When acknowledgment of any action becomes known by the Airline or Authority, they shall give prompt written notice to the other party.
- 9.1.B. Airline shall indemnify, save, hold harmless, and defend Authority, its Council persons, its officials, agents and employees, its successors and assigns, individually or collectively, from and against all liability for any claims and actions and all expenses incidental to the investigation and defense thereof, in any way arising from or based upon the violation of any federal, state, or municipal laws, statutes, ordinances, or regulations, by Airline, its agents, employees, licensees, successors and assigns, or those under its control.
- 9.1.C To the fullest extent permitted by law, Airline shall indemnify, save, hold harmless, and defend Authority, its Council persons, its officials, agents, and employees, its successors and assigns, individually or collectively, from and against any claim, action, loss, damage, injury, liability, and the reasonable cost and expenses (including, but not limited to, reasonable attorney's fees, disbursements, court costs, and expert fees; unless defended by Airline) of any environmental claim arising out of or resulting from Airline's use and occupancy of Airline Premises or use of the Airport, including, but not limited to any claim for (i) discharge of pollutants, hazardous materials, hazardous substances or solid waste, hazardous wastes or toxic materials at or on the Airport, including the air, surface water, ground water, or soil from any source, including underground storage tanks, (ii) generation, handling, treatment, storage, disposal, or transportation of solid, gaseous, or liquid waste at the Airport or at any other site, facility or location, (iii) electromagnetic or other radiation or noise, (iv) exposure of any person to any hazardous material, (v) manufacture, processing, distribution, use, or storage of any hazardous material, (vi) the release or threatened release of any contamination or hazardous material to, from or through the Airport, or (vii) any of the foregoing, related to, caused by or arising from Airline's Airport-related activities, but with respect to non-Airport property, including the air, surface water, ground water, or soil. Notwithstanding the above, Airline shall not be liable for any environmental claim solely and directly attributable to a pre-existing condition on any Airport Area not caused or previously occupied by Airline or any corporate predecessor to Airline at any prior time. Airline shall not be liable for any environmental claim arising out of or resulting from the Authority's conduct.
- 9.1.D The provisions of this Section 9.1 shall survive the expiration or termination of this Agreement, with respect to occurrences during the term of this Agreement.

Section 9.2 – Insurance

- 9.2.A. Without limiting Airline's obligation to indemnify Authority, as provided for in Section 9.1, Airline shall procure and maintain in force at all times during the term of this Agreement an occurrence form, comprehensive airport premises liability and aviation insurance to protect against personal injury and bodily injury liability and property damage liability. The limits for Airlines operating aircraft larger than sixty (60) seats shall be in an aggregate amount of not less than \$100,000,000 per occurrence, combined single limit; provided, however, coverage for non-passengers shall be not less than an aggregate amount of \$25,000,000 per occurrence. The limits for Signatory Airlines operating aircraft with sixty (60) seats or less shall be in an aggregate amount of not less than \$50,000,000 per occurrence, combined single limit. In addition, Airline shall procure and maintain in force during the Term of this Agreement, liability insurance applicable to the ownership, maintenance, use, or operation of any automobile, mobile equipment or other ground vehicle at the Airport (including owned, non-owned, or hired) in an amount not less than \$5,000,000 per occurrence; statutory Workers' Compensation insurance; and other policies of insurance reasonably required by Authority.
- 9.2.B. The aforesaid insurance amounts and types of insurance shall be reviewed from time to time by Authority and may be adjusted by Authority if Authority reasonably determines such adjustments are necessary to protect Authority's interests. Airline shall furnish Authority no later than thirty (30) days following the execution of this Agreement a certificate or certificates of insurance as evidence that such insurance is in force. Authority reserves the right to require a certified copy of such certificates upon request. Airline shall name Authority as an additional insured on such insurance policy or policies to the extent of contractual liability assumed by Airline under Section 9.1 herein. Said policies shall be in a form and content satisfactory to Authority and shall provide for thirty (30) days written notice to Authority prior to the cancellation of or any material change in such policies.

Section 9.3 - Subrogation of Insurance

- 9.3.A. Authority hereby waives any and all rights of recovery against Airline for or arising out of damage or destruction of the building, or the demised premises, or any other property of Authority, from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of Airline, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver.
- 9.3.B. Airline hereby waives any and all rights of recovery against Authority for or arising out of damage to or destruction of any property of Airline from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of Authority, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver.

ARTICLE X CANCELLATION BY AUTHORITY: EVENTS OF DEFAULT BY AIRLINE

Section 10.1 - Events of Default by Airline

- 10.1.A. Upon the occurrence of any one of the following events of default, Authority may issue a written notice of default after providing Airline the cure period noted:
 - 10.1.A.(1) The conduct of any business or performance of any acts at Airport not specifically authorized herein or by other agreements between Authority and Airline, and said business or acts do not cease within thirty (30) days of receipt of Authority's written notice to cease said business or acts.
 - 10.1.A.(2) The failure to cure a default in the performance of any of the terms, covenants and conditions required herein (except Contract Security requirements, insurance requirements, and payment of rentals, fees, and charges) within thirty (30) days of receipt of written notice by Authority.
 - 10.1.A.(3) If by reason of the nature of such default referred to in Paragraph (2) above, the same cannot be remedied within thirty (30) days following receipt by Airline of written demand from Authority, and Airline fails to commence the remedying of such default, or having so commenced, shall fail thereafter to continue with diligence the curing thereof; provided, however, Airline's required performance under this Paragraph (3) shall be conditioned by the Force Majeure provisions of Section 16.16. Airline shall have the burden of proof to demonstrate (i) that the default cannot be cured within thirty (30) days, (ii) that it is proceeding with diligence to cure said default, and (iii) that such default will be cured within a reasonable period of time.
- 10.1.B. Upon the occurrence of any one of the following events of default, Authority may immediately issue written notice of default:
 - 10.1.B.(1) The failure by Airline to pay any part of the rentals, fees and charges due hereunder and the continued failure to pay said amounts in full within ten (10) days of the date of Authority's written notice of payments past due. Provided, however, if a dispute arises between Authority and Airline with respect to any obligation or alleged obligation of Airline to make payments to Authority, payments under protest by Airline of the amount due shall not waive any of Airline's rights to contest the validity or amount of such payment. In the event any court or other body having jurisdiction determines all or any part of the protested payment shall not be due, then Authority shall promptly reimburse Airline any amount determined as not due. Further, throughout the duration of any appeal or contest of any fees or charges by Airline, Airline will not be held in default under the provisions outlined herein. Authority shall use due diligence in attempting to collect any past due rentals, fees, and charges from any Scheduled Air Carrier providing air service at the Airport, including Airline.

- 10.1.B.(2) The failure by Airline to provide and keep in force Contract Security in accordance with Section 6.8.
- 10.1.B.(3) The failure by Airline to provide and keep in force insurance coverage in accordance with Section 9.2.
- 10.1.B.(4) The appointment of a trustee, custodian, or receiver of all or a substantial portion of Airline's assets.
- 10.1.B.(5) The divestiture of Airline's estate herein by operation of law, by dissolution, or by liquidation.
- 10.1.B.(6) The insolvency of Airline; or if Airline shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors, or shall seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state thereof.
- 10.1.B.(7) The voluntary discontinuance for a period of at least thirty (30) consecutive days by Airline of its operations at the Airport unless otherwise approved by Authority, in advance, in writing.

Section 10.2 - Continuing Responsibilities of Airline

Notwithstanding the occurrence of any event of default, Airline shall remain liable to Authority for all rentals, fees and charges payable hereunder and for all preceding breaches of any covenant of this Agreement. Furthermore, unless Authority elects to cancel this Agreement, Airline shall remain liable for and promptly pay all rentals, fees and charges accruing hereunder until the expiration of this Agreement as set forth in Article II or until this Agreement is cancelled by Airline pursuant to Article XI.

Section 10.3 - Remedies of Authority for Airline's Default

Upon the occurrence of any event enumerated in Paragraphs 10.1.A. or 10.1.B., the following remedies shall be available to Authority:

- 10.3.A Authority may cancel this Agreement, effective upon the date specified in the notice of cancellation. For events enumerated in Paragraph 10.1.A., such date shall be not less than thirty (30) days from said notice. Upon such date, Airline shall have no further rights hereunder and Authority shall have the right to take immediate possession of Airline's Airline Premises.
- 10.3.B Authority may reenter the Airline Premises and may remove all Airline persons and property from same upon the date of reentry specified in Authority's written notice of reentry to Airline. For events enumerated in Paragraph 10.1.A., reentry shall not be less than thirty (30) days of the date of notice of reentry. Upon any removal of Airline property by Authority hereunder, Airline property may be stored at a public warehouse or elsewhere at Airline's sole cost and expense.

10.3.C Authority may relet Airline Premises and any improvements thereon or any part thereof at such rentals, fees, and charges and upon such other terms and conditions as Authority, in its reasonable judgment, may deem advisable, with the right to make alterations, repairs or improvements on said Airline Premises. In reletting the Airline Premises, Authority shall be obligated to make a good faith effort to obtain terms no less favorable to Authority than those contained herein and otherwise seek to mitigate any damages it may suffer as a result of Airline's default.

10.3.D In the event that Authority relets Airline Premises, rentals, fees, and charges received by Authority from such reletting shall be applied: (i) to the payment of any indebtedness other than rentals, fees, and charges due hereunder from Airline to Authority; (ii) to the payment of any cost of such reletting; and (iii) to the payment of rentals, fees, and charges due and unpaid hereunder. The residue, if any, shall be held by Authority and applied in payment of future rentals, fees, and charges as the same may become due and payable hereunder. If that portion of such rentals, fees, and charges received from such reletting and applied to the payment of rentals, fees, and charges hereunder is less than the rentals, fees, and charges payable during applicable periods by Airline hereunder, then Airline shall pay such deficiency to Authority. Airline shall also pay to Authority, as soon as ascertained, any costs and expenses incurred by Authority in such reletting not covered by the rentals, fees, and charges received from such reletting.

10.3.E No reentry or reletting of Airline Premises by Authority shall be construed as an election on Authority's part to cancel this Agreement unless a written notice of cancellation is given to Airline.

10.3.F Airline shall pay to Authority all other costs incurred by Authority in the exercise of any remedy in this Article X, including, but not limited to, reasonable attorney's fees, disbursements, court costs, and expert fees.

10.3.G Authority may exercise any other legal or equitable remedy, including but not limited to the remedies hereinafter specified.

Section 10.4 - Remedies Under Federal Bankruptcy Laws

Notwithstanding the foregoing, upon the filing by or against Airline of any proceeding under Federal bankruptcy laws, if Airline has defaulted in the performance of any provision of this Agreement within the six (6) months preceding such filing, Authority shall have the right to cancel this Agreement, in addition to other remedies provided under provisions of the Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984, or any successor statute, as such may be subsequently amended, supplemented, or replaced. Such cancellation shall be by written notice to Airline within sixty (60) days from the date of Airline's initial filing in bankruptcy court.

ARTICLE XI CANCELLATION BY AIRLINE: EVENTS OF DEFAULT BY AUTHORITY

Section 11.1. - Events of Default by Authority

Each of the following events shall constitute an "Event of Default by Authority":

- 11.1.A. Authority fails after receipt of written notice from Airline to keep, perform or observe any term, covenant or condition herein contained to be kept, performed, or observed by Authority and such failure continues for thirty (30) days, or if by its nature such Event of Default by Authority cannot be cured within such thirty (30) day period, Authority fails to commence to cure or remove such Event of Default by Authority within said thirty (30) days and to cure or remove the same as promptly as reasonably practicable.
- 11.1.B. Authority closes Airport to flights in general or to the flights of Airline, for reasons other than weather, acts of God or other reasons beyond its control, and fails to reopen Airport to such flights within sixty (60) days of such closure.
- 11.1.C. The Airport is permanently closed as an air carrier airport by act of any federal, state or local government agency having competent jurisdiction.
- 11.1.D. Airline is unable to use Airport for a period of at least thirty (30) days due to any law or any order, rule or regulation of any appropriate governmental authority having jurisdiction over the operations of Airport, or any court of competent jurisdiction issues an injunction in any way preventing or restraining the use of Airport or any part thereof for Airport purposes, and such injunction remains in force for a period of a least thirty (30) days.
- 11.1.E. The United States Government or any authorized agency of the same (by executive order or otherwise) assumes the operation, control or use of Airport and its facilities in such a manner as to substantially restrict Airline from conducting its operations, and such restriction shall continue for a period of at least thirty (30) days.

Section 11.2 - Remedies of Airline for Authority's Defaults

Upon the occurrence of an Event of Default by Authority and after appropriate notice by Airline to Authority, Airline shall have the right to terminate this Agreement and all rentals, fees and charges payable by Airline under this Agreement shall terminate. In the event that Airline's operations at Airport should be restricted substantially by action of any governmental agency having jurisdiction thereof, then Airline shall, in addition to the rights of termination herein granted, have the right to a suspension of this Agreement, or part thereof, and abatement of an equitable proportion of the payments due hereunder, from the time of giving written notice of such election until such restrictions shall have been remedied and normal operations restored.

ARTICLE XII SURRENDER OF AIRLINE PREMISES

Section 12.1 - Surrender and Delivery

Promptly upon the termination of this Agreement, by lapse of time, or otherwise, Airline shall at once peaceably surrender and deliver to Authority Airline Premises and all improvements thereon to which Authority is entitled hereunder.

Section 12.2 - Removal of Property

- 12.2.A. Airline shall have the right at any time during the term of this Agreement to remove from Airport its aircraft, tools, equipment, trade fixtures, and other personal property, title to which shall remain in Airline unless otherwise set forth in this Agreement, and shall remove such aircraft, tools, equipment, trade fixtures, and other personal property within fifteen (15) days following termination of this Agreement, whether by expiration of time or otherwise as provided herein, subject, however, to any valid lien which Authority may have thereon for unpaid rentals, fees and charges. Airline shall not abandon any portion of its property without the written consent of Authority. Any and all property not removed by Airline within thirty (30) days following termination of this Agreement shall, at the option of Authority, become the property of Authority at no cost to Authority. All Authority property damaged by or as a result of the removal of Airline property shall be restored by Airline to the condition existing before such damage at Airline's expense.
- 12.2.B. Notwithstanding the above, in the event that Airline desires to sell any baggage equipment to Authority upon the termination of this Agreement, or at any other time during the term of this Agreement, then in such event:
 - 12.2.B.(1) Upon the prior written approval of the Director, Airline shall have the right to leave such property in place for a period not exceeding ninety (90) days following the termination of this Agreement, or the deletion, pursuant to Section 3.1, of the space on which such property is located, pending the successful completion of such a sale. During such period, Authority shall have the right to permit the use of such property by other Air Transportation Companies, without payment by Authority to Airline; provided, however, Airline shall have the right to seek payment for such use(s) directly from any such other Air Transportation Companies. In the event no such sale is completed such property must be removed immediately upon the expiration of the 90-day period.
 - 12.2.B(2) Authority shall have the right of first refusal to purchase said property at the highest bona fide competing offer or market value.

ARTICLE XIII ASSIGNMENT, SUBLETTING AND HANDLING AGREEMENTS

Section 13.1 - Assignment and Subletting by Airline

- 13.1.A.(1) Airline shall not sell, convey, transfer, mortgage, pledge, or assign this Agreement, or any part thereof, or any rights created thereby or the leasing thereunder in any manner whatsoever or sublet Airline Premises or any part thereof or any of the privileges recited herein without the prior written consent of the Director. However, Airline shall have the right to assign all or any part of its rights and interests under this Agreement to an Affiliate or to any successor to its business through merger or consolidation. Consent of Authority for such assignment shall not be required; provided, however, due notice of any such assignment shall be given to the Director at least thirty (30) days prior to such assignment hereunder.
- 13.1.A.(2) In the event Airline, using large jet-loader aircraft, intends to assign all or part of its Airline Premises to an Affiliate using smaller aircraft that cannot be served by a loading bridge, then in such an event Director may re-assign gate positions as appropriate to ensure the highest and best use of loading bridge gates and ramp safety.
- 13.1.A.(3) Any such successor corporation no later than thirty (30) days after the date of such merger, consolidation or succession shall acknowledge by a writing satisfactory in form and content to Authority that it has assumed all obligations of Airline and will fully honor all the terms and conditions set forth in this Agreement.

13.1.B. Airline shall not sublease Airline Premises.

Section 13.2 - Handling Agreements

In the event Airline agrees to ground handle any portion of the operations of another Scheduled Air Carrier or of a Requesting Airline, Airline shall provide Authority advance written notice of such proposed activities, including a description of the type and extent of services to be provided. Notwithstanding the provisions of the foregoing sentence, Airline shall not commence to ground handle another Scheduled Air Carrier or a Requesting Airline without the prior written permission of the Director if such Scheduled Air Carrier or Requesting Airline does not have in force an operating agreement with Authority.

Section 13.3 – Miscellaneous

No assignment, transfer, conveyance, or granting a nonexclusive license by Airline shall relieve in any manner Airline of its responsibility for payment of rent and performance of all other obligations provided in this Agreement, without specific written consent of the Director to such relief. The Director shall consider all relevant factors, including the financial strength of the proposed assignee in determining whether to grant such relief.

ARTICLE XIV ACCOMMODATION OF A REQUESTING AIRLINE

Section 14.1 - Declaration of Intent

The parties hereto acknowledge the objective of Authority to offer to all airlines desiring to serve Airport access to Airport and to provide adequate Gate Positions and space in the Terminal. Recognizing that physical and financial limitations may preclude timely expansion of the Terminal and Aircraft Parking Apron areas to meet the stated requests of Airline or other airlines for additional facilities, Authority hereby states its intent to accommodate such requests, if necessary, through sharing, from time to time, of Gate Positions and other Terminal facilities.

Section 14.2 - Accommodation of Requesting Airlines

- 14.2.A.(1) In the event Authority cannot accommodate a Requesting Airline in areas not then leased to Scheduled Air Carriers or other Terminal tenants, then in such event Airline agrees to cooperate with Authority to accommodate the needs of a Requesting Airline on a temporary basis by permitting such Requesting Airline to utilize Gate Position(s) and other portions of Airline Premises and other necessary facilities in connection with and for the time period(s) necessary to permit passenger loading and unloading operations in conjunction with Requesting Airline's planned operations at times when the use of such facilities shall not interfere with Airline's planned operations (i.e., one (1) hour prior to a scheduled arrival, one (1) hour after the scheduled departure time, or overnight parking of aircraft of Airline. Authority shall provide Airline with as much advance notice as reasonably possible so that Airline may plan for the accommodation of a Requesting Airline.
- 14.2.A.(2) Airline's obligation hereunder shall be subject to execution of a written agreement between Airline and such Requesting Airline, including indemnification of Airline by Requesting Airline, setting forth mutually agreed to terms and conditions governing such use which shall include a charge by Airline for its costs plus a reasonable administrative charge not to exceed fifteen (15) percent.
- 14.2.A.(3) Airline agrees to make reasonable efforts to facilitate the temporary accommodation of Requesting Airline's operations, including use of ticket counter area, use of Airline's baggage facilities and use of other portions of Airline Premises and facilities reasonably available to accommodate Requesting Airline, if (1) Airline has adequate capabilities, capacity, facilities and personnel therefore, after taking into account Airline's own requirements and contractual obligations, the compatibility of said Requesting Airline's proposed operations with those of Airline, and the need for labor harmony, and (2) said Requesting Airline enters into a written agreement with Airline therefore, which agreement shall be approved in writing by Authority prior to the effective date thereof.
- 14.2.A.(4) In the event Requesting Airline materially defaults under the provisions of its written agreement with Airline, then in such event Airline shall no longer be required to accommodate Requesting Airline.

- 14.2.B. Subject to the provisions of Section 13.1, nothing contained in this Article XI shall prevent or prohibit Airline from electing to enter into an agreement with other air carriers authorized to operate at Airport and desiring to use Airline Premises as provided in Article XIII herein.
- 14.2.C. During the period of use of Airline Premises by a Requesting Airline at Authority's request pursuant to this Article XIV, Airline shall be relieved of its obligation under this Agreement to indemnify and save harmless Authority, its agents and employees, its successors and assigns, with regard to any claim for damages or personal injury arising out of or in connection with said accommodated Requesting Airline's use of Airline Premises unless such damage or personal injury is proximately caused by the negligence of Airline, its agents, employees, licensees, or those under its control who have come upon Airline Premises in connection with Airline's occupancy hereunder. Authority shall require such Requesting Airline to indemnify Authority and Airline in the manner and to the extent required of Airline pursuant to Article IX.

ARTICLE XV GOVERNMENT INCLUSION

Section 15.1 - Federal and Other Governmental Authority Funds

- 15.1.A. This Agreement shall be subordinate to the provisions of any existing or future agreements between Authority and the United States Government, or other governmental authority, relative to the operation or maintenance of Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds or other governmental authority funds for the development of Airport to the extent that the provisions of any such existing or future agreements are generally required by the United States or other governmental authority of other civil airports receiving such funds. Authority agrees to provide Airline written notice in advance of the execution of such agreements of any provisions which would modify the terms of the Agreement.
- 15.1.B. Authority shall not permit revenue diversion from the Airport, as such diversion is defined in the Federal Aviation Administration Act of 1994 and the Federal DOT's 1999 policy implementing the provisions of the 1994 Act.

Section 15.2 – Nondiscrimination

- 15.2.A. Airline, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained or otherwise operated on the said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended, or for another purpose involving the provision of similar services or benefits, Airline shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
- 15.2.B. Airline, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Airport; (2) in the construction of any improvements, on, over, or under Airline Premises and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) Airline shall use Airport in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.
- 15.2.C. Airline shall use Airport in compliance with all requirements imposed by or pursuant to 14 CFR Part 152 and Title VI of the Civil Rights Act of 1964, and as said Title and Regulations may be amended, and assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities

covered in 14 CFR Part 152, Subpart E. Airline assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. Airline assures that it will require that its covered suborganizations provide assurances to Airline that they similarly will undertake affirmative action programs, and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

- 15.2.D. Airline shall comply with the laws of the State of Kansas and City of Wichita prohibiting discrimination on the basis of race, color, sex, religion, national origin, age, or handicap, and as such laws may be amended or unless a waiver has been granted by the United States Government.
- 15.2.E. Should Airline authorize another person, with Authority's prior written consent, to provide services or benefits upon Airline Premises, Airline shall obtain from such person a written agreement to comply with Paragraphs 15.2.A. through 15.2.D. If requested, Airline shall furnish a copy of such agreement to Authority prior to said authorization.
- 15.2.F. In the event the breach of any of the above nondiscrimination covenants shall constitute an Event of Default by Airline, Authority shall have the right to terminate this Agreement and to reenter and repossess the Airline Premises and the facilities thereon and hold the same as if this Agreement had never been made or issued. The right granted to Authority by the foregoing sentence shall not be effective until applicable procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

ARTICLE XVI MISCELLANEOUS PROVISIONS

Section 16.1 - Rights Non-Exclusive

Notwithstanding anything herein contained that may be or appear to the contrary, the rights, privileges and licenses granted under this Agreement, except in the Exclusive Use Premises, are "non-exclusive", and nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958, as such may be amended.

Section 16.2 - Airport Security

Airline and Authority shall comply with all applicable regulations relating to Airport security and shall cooperate in controlling the Airline Premises so as to prevent or deter unauthorized persons from obtaining access to the air operations area of Airport.

Should Airline, its employees, subcontractors, suppliers, agents, and/or representatives cause any security violations, and should Authority be cited for a civil fine or penalty for such security violation, Airline agrees to reimburse Authority for any monetary civil fine or penalty, which may be imposed on Authority by TSA, however, nothing herein shall prevent the Airline from contesting the legality, validity or application of such fine or penalty to the full extent Authority may be lawfully entitled.

Section 16.3 - Avigation Rights

- 16.3.A. Authority reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of Airport, including Airline Premises, for navigation or flight in said airspace for landing on, taking off from, or operating on Airport, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used, using said airspace or landing at, taking off from, or operating on or about Airport.
- 16.3.B. Authority reserves the right to take any action it considers necessary to protect the aerial approaches of Airport against obstructions, including the right to prevent Airline from erecting, or permitting to be erected, any building or other structure on Airport which, in the opinion of Authority, would limit the usefulness of Airport or constitute a hazard to aircraft.

Section 16.4 - Height Limitations

Airline expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on Airline Premises to such a height so as to comply with Federal Aviation Regulations, Part 77, as such may be amended or replaced from time to time.

Section 16.5 - National Emergency

During time of war or national emergency Authority shall have the right to enter into an agreement with the United States Government for use of part or all of the Landing Area, the publicly-owned air navigation facilities and/or other areas or facilities of Airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the United States Government, shall be suspended.

Section 16.6 - Compliance With Law

16.6.A. Airline, its agents and employees, shall observe and comply with all applicable rules, regulations, orders and restrictions which are now in force or which may hereafter be adopted by Authority or the City of Wichita with respect to the operation of Airport, and shall also be subject to any and all applicable current and future laws, statutes, rules, regulations or orders of any governmental authority lawfully exercising authority over Airport or Airline's operations conducted hereunder: provided, however;

16.6.A.(1) Any new rules, regulations, orders or restrictions enacted by Authority during the term of this Agreement shall not be inconsistent with the terms, provisions, rights and privileges granted hereunder, unless enacted in compliance with the lawful rules, regulations, ordinances, laws or orders of other governmental authorities having jurisdiction over the operation of the Airport.

16.6.A.(2) Airline may, at its own risk, costs and expense and at no cost to Authority, and without being considered to be in breach of this Agreement, contest by appropriate judicial or administrative proceedings the applicability or the legal or constitutional validity of such rules, regulations, ordinances, laws or orders.

16.6.B. Authority shall not be liable to Airline for any diminution or deprivation of its rights hereunder due to the exercise of any such authority as provided for in this Section 16.6, nor shall Airline be entitled to terminate this Agreement by reason thereof unless the exercise of such authority shall so interfere with Airline's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas, or permit Airline to cancel this Agreement pursuant to the provisions of Article XI.

Section 16.7 - Agent for Service of Process

It is expressly understood and agreed that if Airline is not a resident of the State of Kansas, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation not licensed to do business in Kansas, then in any such event, Airline designates the Secretary of State, State of Kansas, its agent for the purpose of service of process in any court action between it and Authority arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the State of Kansas for service upon a non-resident. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, then as an alternative method of service of process, Airline may be personally served with such process out of this State by the registered mailing of such complaint and process

to Airline at the address set forth herein. Any such service out of this State shall constitute valid service upon Airline as of the date of mailing to respond thereto.

Section 16.8 - Nonliability of Agents and Employees

No member, officer, agent, director, or employee of Authority or Airline shall be charged personally or held contractually liable by or to the other party under the terms or provisions of this

Agreement or because of any breach thereof or because of its execution or attempted execution.

Section 16.9 - Partnership or Agency

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto. It is understood and agreed that neither the method of computation of rentals, fees and charges, nor any other provisions contained herein, nor any acts of the parties hereto, creates a relationship other than the relationship of Authority and Airline.

Section 16.10 - Taxes, Assessments, and Licenses

Airline shall at its own expense obtain all permits, licenses, approvals and certificates and pay all taxes, assessments, fees and charges required by any regulation or any law of the City of Wichita, County of Sedgwick, State of Kansas, the United States, or other governmental body with regard to the business to be conducted by Airline on Airport or within its Airline Premises pursuant to the terms of this Agreement; provided, however, that Airline may, at its own risk, costs and expense and at no cost to Authority, contest by appropriate judicial or administrative proceedings the applicability or amounts of any such taxes, assessments, fees and charges.

Section 16.11 - Approval by Authority

Whenever this Agreement calls for approval by Authority, such approval shall be evidenced by the written approval of the Director or his designee. Any approval required by either party to this Agreement shall not be unreasonably withheld or delayed.

Section 16.12 – Most Favored Nation

Each Air Transportation Company using the Airport shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities and equipment, subject to reasonable classifications such as tenants or Non-Participating Airlines and Signatory Airlines and Non-Signatory Airlines. Classification or status as tenant or Signatory Airline shall not be unreasonably withheld by the Airport, provided Air Transportation Company assumes obligations substantially similar to those already imposed on Air Transportation Companies in such classifications or status.

Section 16.13 - Compliance by Other Tenants

Authority shall whenever possible make reasonable efforts to obtain uniform compliance with its rules and regulations; provided, however, Authority shall not be liable to Airline for any violation or non-observance of such rules and regulations by any tenant, concessionaire or other Air Transportation Company at Airport.

Section 16.14 - Quiet Enjoyment

Authority agrees that on payment of the rentals, fees and charges due hereunder, and performance of the covenants and agreements on the part of Airline to be performed hereunder, Airline shall peaceably have and enjoy Airline Premises and all the rights and privileges of Airport, its appurtenances and facilities.

Section 16.15 - Authority's Right of Entry

Any authorized representative of Authority shall have the right to enter upon any premises and facilities of Airport at any reasonable time for the purpose of inspection or for any purpose incident to the performance of its obligations hereunder or in the exercise of any of its governmental functions. Authority shall use its best efforts to avoid disruption of Airline's operation.

Section 16.16 - Force Majeure

Except as herein provided, neither Authority nor Airline shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations other than the payment of rentals, fees and charges hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of God, acts of a public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible or which are not within its control. Under no circumstances shall the occurrence of any event provided for in this Section 16.16 excuse Airline from paying the rentals, fees and charges payable to Authority by Airline pursuant to the terms of this Agreement during the term of this Agreement.

Section 16.17 – Notices

Notices required herein may be given by registered or certified mail by depositing the same in the the United States mail, postage prepaid. Any such notice so mailed shall be presumed to have been received by the addressee seventy-two (72) hours after deposit of same in the mail. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices to Authority shall be addressed as follows:

Wichita Airport Authority 2173 Air Cargo Road Wichita Mid-Continent Airport Wichita, Kansas 67209 Notices to Airline shall be addressed as follows:

Seaport Airlines, Inc. 7505 NE Airport Way Portland International Airport Portland, Oregon 97218

If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

Section 16.18 - Place of Payment

All payments required of Airline by this Agreement shall be made at the office of The Wichita Airport Authority, 2173 Air Cargo Road, Wichita Mid-Continent Airport, Wichita, Kansas 67209, or to such other address as may be substituted therefore.

Section 16.19 - Nonwaiver of Rights

No waiver of default by either party of any of the terms, covenants, and conditions herein to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

Section 16.20 - Governing Law

This Agreement is to be read and construed in accordance with the laws of the State of Kansas and ordinances of the City of Wichita. The parties hereto agree that any court of proper jurisdiction sitting in Sedgwick County, Kansas shall be the proper forum for any actions brought hereunder.

Section 16.21 – Severability

If one or more clauses, sections, or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, by any court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby unless continued enforcement thereof would unreasonably prejudice the rights of either party to perform and/or enjoy the rights provided under this contract, in which case the party so prejudiced may terminate this Agreement upon thirty (30) days' written notice.

Section 16.22 - Other Agreements

Nothing contained in this Agreement shall be deemed or construed to nullify, restrict or modify in any manner the provisions of any other lease or contract between Authority and Airline authorizing the use of Airport, its facilities and appurtenances upon payment of rentals, fees and charges therein provided.

Section 16.23 – Gender

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

Section 16.24 - Headings and Titles

The headings of the articles of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.

Section 16.25 - Incorporation of Exhibits

All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

Section 16.26 - Entire Agreement

16.26.A. It is understood and agreed that this instrument contains the entire agreement between the parties hereto. It is further understood and agreed by Airline that Authority and Authority's agents have made no representations or promises with respect to this Agreement or the making of this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by Airline against Authority for, and Authority shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other written or parol agreement with Authority being expressly waived by Airline.

16.26.B. The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

Section 16.27 – Amendment

Except as provided herein, no amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

Section 16.28 – Savings

This Agreement is the result of extensive negotiations between the parties and shall not be construed against Authority by reason of the preparation of this Agreement by Authority.

Section 16.29 - Successors and Assigns Bound

All of the covenants, conditions and agreements contained herein shall extend to and be binding upon the legal representatives, successors and assigns of the respective parties hereto.

Section 16.30 – Subordination to Bond Resolution

16.30.A This Agreement and all rights of Airline hereunder are expressly subject and subordinate to the lien and provisions of any pledge, transfer, hypothecation, or assignment made at any time by Authority to secure Bond financing. This Agreement is subject and subordinate to the terms, covenants, and conditions of any Bond Resolution.

16.30.B In conflicts between this Agreement and a Bond Resolution, the Bond Resolution shall govern.

16.30.C All definitional terms that are not specifically defined herein shall have the meanings set forth in the Bond Resolution.

Section 16.31 – Performance

The parties expressly agree that time is of the essence in this Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall relieve the other party, without liability, of any obligation to accept such performance.

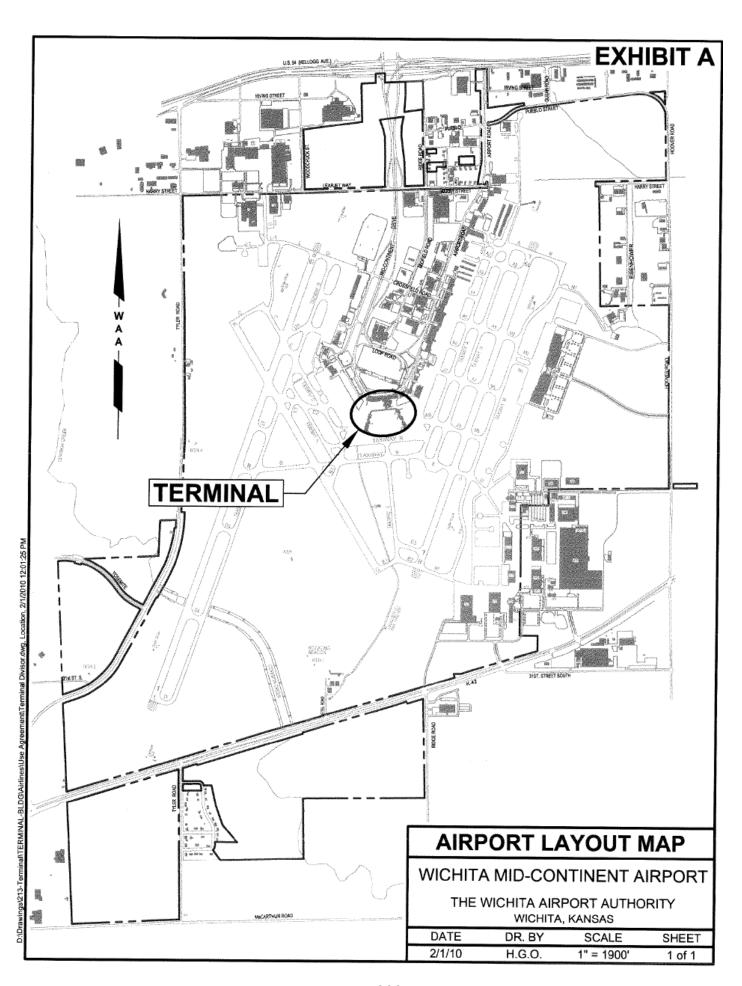
Section 16.32 - Capacity to Execute

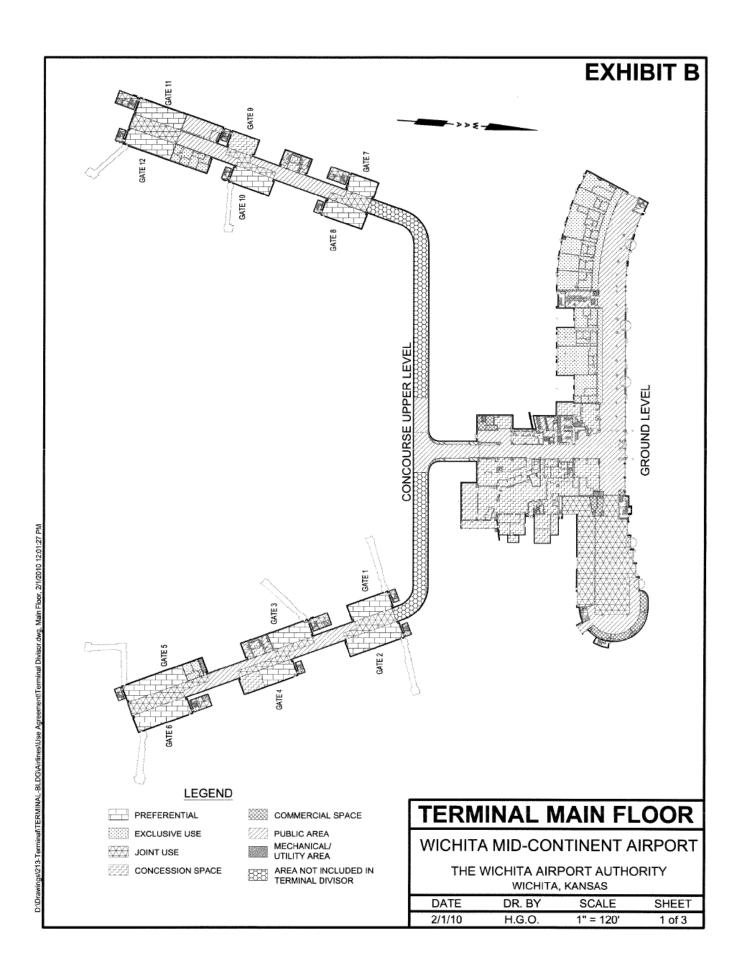
16.32.A. Authority and Airline each warrant and represent to one another that this Agreement constitutes a legal, valid and binding obligation of that party.

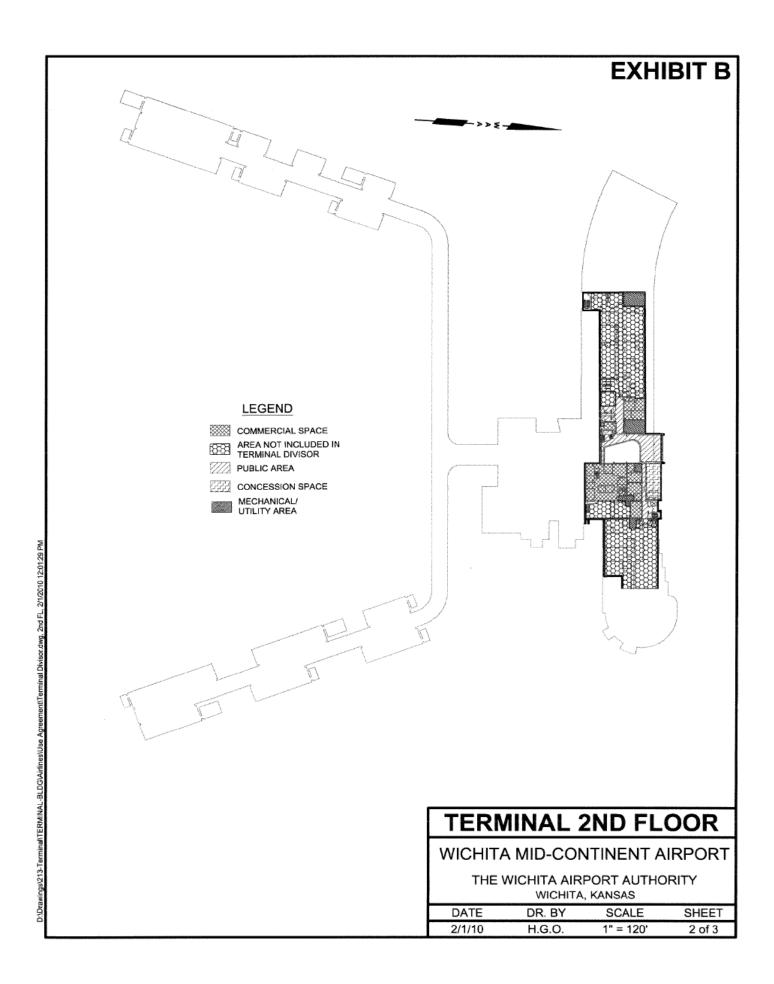
16.32.B. The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

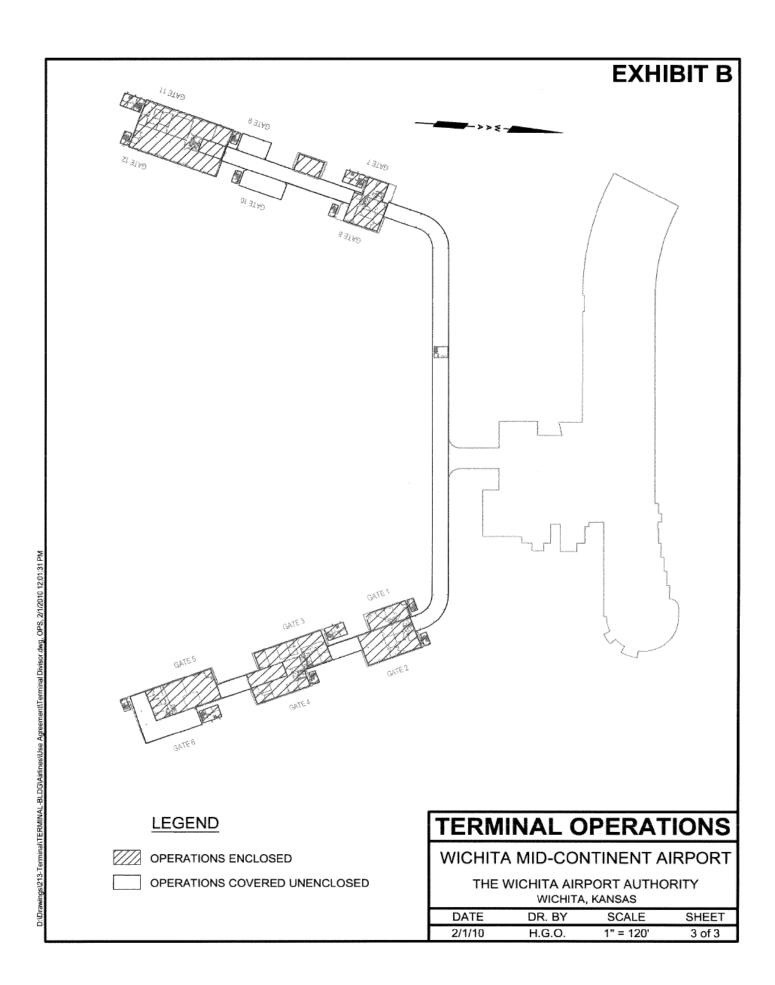
IN WITNESS THEREOF, Authority has caused these presents to be executed by the Wichita Airport Authority, by direction of the City Council, attested to by the City of Wichita Clerk and the seal of the Wichita Airport Authority affixed hereunto, and Airline has caused these presents to be signed by its proper corporate officers and its corporate seal hereunto affixed and attested to as of the day and year first above written.

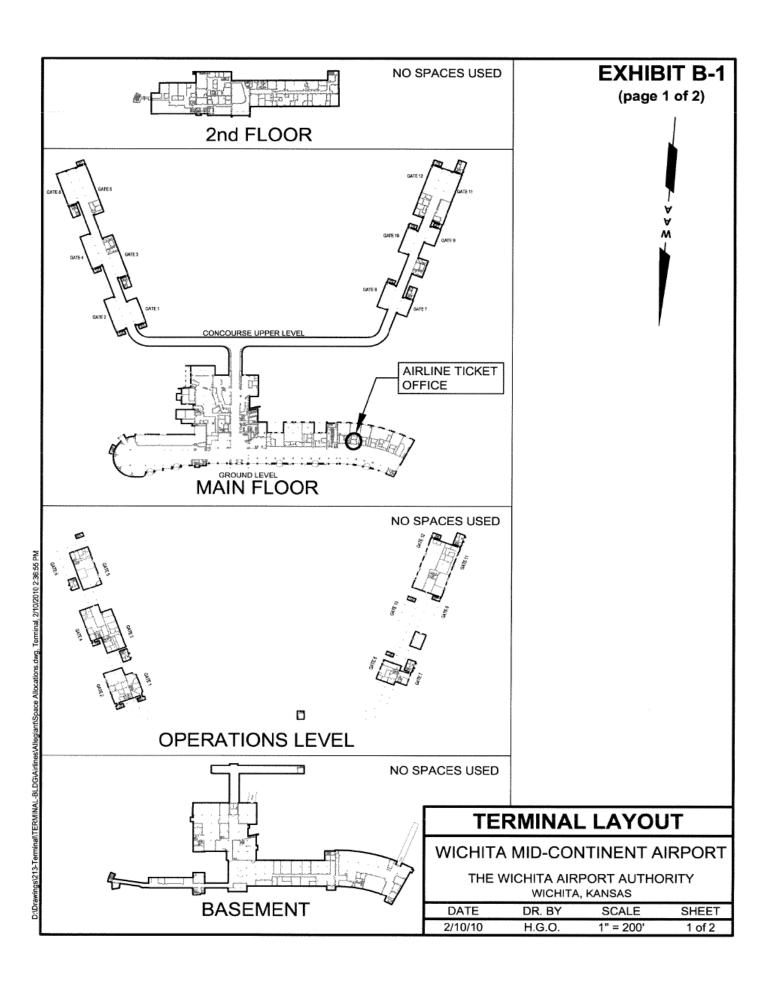
ATTEST:	WICHITA AIRPORT AUTHORITY WICHITA, KANSAS
By: Karen Sublett, City Clerk	By:Carl Brewer, President "Authority"
By Victor D. White, Director of Airports	
ATTEST:	SEAPORT AIRLINES, INC.
By:	By:
Title:	Title: Robert L. McKinney, President "Airline"
APPROVED AS TO FORM:	Date:











RESPONSIBILITY OF AUTHORITY AND AIRLINE FOR MAINTENANCE AND OPERATION OF TERMINAL AREAS

			Airline			Airli	ne
	Exclusive Use			Preferential Use			
	Ticket Counter	Offices	Bag Make-Up	Unenclosed Covered Apron	Opts Areas Other	Holdroom	Apron
Air Conditioning			-	•			•
Maintenance	W	W	W	N/A	W	W	N/A
Chilled Air Distribution	W	W	W	N/A	W	W	N/A
Electrical							
Bulb & Tube Replacement	Α	Α	A	A	Α	A	N/A
Power	W	W	W	W	W	W	N/A
Maintenance & Repair	W	W	W	W	W	W	N/A
Heating							
Maintenance	W	W	W	N/A	W	W	N/A
Warm Air Distribution	W	W	W	N/A	W	W	N/A
Water-Maintenance							
Distribution	W	W	W	W	W	W	N/A
Fixtures	W	W	W	W	W	W	N/A
General Maintenance & Repair							
Other than Structure (incl. doors)	A	Α	A	A	A	A	W
Structure*	W	W	W	W	W	W	W
Exterior	W	W	W	W	W	W	W
Sewage & Plumbing							
Distribution	W	W	W	W	W	N/A	W
Fixtures	A	A	A	W	A	N/A	W
Public Address System	W	W	W	W	W	W	N/A
Custodial Service**	A	A	A	N/A	A	W	N/A
Window Cleaning							
Exterior	A	A	A	N/A	A	W	N/A
Interior	A	A	A	N/A	A	W	N/A
Snow & Ice Removal							
Walkways	N/A	N/A	N/A	A	A	N/A	A
Other	N/A	N/A	N/A	W	N/A	N/A	W
Pest Extermination	W	W	W	W	W	W	W
Flooding	W	W	W	W	W	W	W

Notes:

A = Airline

 $W = Wichita \ Airport \ Authority$

N/A = Not Available or Not Applicable

PUBLIC AND JOINT USE AREAS - Both areas will be maintained by the Wichita Airport Authority.

^{*}Structure is defined as anything, which has a structural load-bearing function. This may include load-bearing walls, and horizontal and vertical beams and bracings, but may not include non-load bearing walls, ceilings, doors and door frames.

^{**}Custodial Services includes routine vacuum, trash removal, carpet extraction, steam cleaning and other specialty cleaning.

EXHIBIT "D"

MONTHLY STATISTICAL REPORT

(To be submitted within 5 working days following the end of each month)

SUBMIT TO: The Wichita Airport Aut Wichita Mid-Continent A 2173 Air Cargo Road Wichita, KS 67209	-		
FOR THE	MONTH OF		
AIRLINE NA (A separate Exhibit should		n airline.)	
1. PASSENGERS			
	<u>Enplaned</u>	<u>Deplaned</u>	<u>Total</u>
Revenue			
Non-Revenue			
Total	=======	=======	=======
2. <u>CARGO & MAII</u>	<u> (Pounds)</u>		
	<u>Enplaned</u>	<u>Deplaned</u>	<u>Total</u>
Cargo*			
Mail			
Total	=======	=======	=======
* Cargo include:	s freight plus express	5.	
I certify that the above inf	formation is correct to	the best of my knowl	edge and belief.
Signature:		_ Title:	
Drinted Name:		Date	

EXHIBIT "E"

MONTHLY LANDED WEIGHT/FEE REPORT

(To be submitted within 5 days following the end of each month)

SUBMIT TO: The Wichita Airport Autho Wichita Mid-Continent Airp 2173 Air Cargo Road Wichita, KS 67209 FOR THE MC	-		
AIRLINE NAME (A separate Exhibit should b		irline.)	
3. <u>AIRCRAFT LAND</u>	<u>INGS</u>		
A. Landings <u>NOT</u>	Subject to Landin	Number	
<u>Aircraft</u> <u>Type</u> Training & Testing*			Total Landed Weight
Return Landings			
Total		=====	========

^{*} Training and Testing flights in excess of 10 percent of Revenue Landings by Airline in any one calendar month shall be included under Landings Subject to Landing Fees, pursuant to Section 4.1.D of the Agreement.

EXHIBIT "E"

1. AIRCRAFT LANDINGS (continued)

B. Landings Subject to Landing Fees:				
<u>Aircraft</u>	<u>FAA Certified</u> <u>Maximum Gross</u>	<u>Number</u> <u>of</u>		
<u>Type</u> Revenue Landings	<u>Landing Weight</u>	<u>Landings</u>	Total Lande	<u>ed Weight</u>
J				
Tunining O Tooking*				
Training & Testing*				
Other Non-Revenue				
Landings				
Total		=====	- - 1	1 000
			ed by	
Landed Weight (lbs):				
Multiplied by the Landing Fee Rate of \$				

* Training and Testing flights in excess of 10 percent of Revenue Landings by Airline in any one calendar month shall be included under Landings Subject to Landing Fees, pursuant to Section 4.1.D of the Agreement.

Total Landing Fee Charges: \$======

EXHIBIT "E"

2. TERMINAL USE CHA			
	<u>Unleased</u> <u>Ticket</u> <u>Counter</u>	<u>Unleased</u> <u>Terminal</u> <u>Holdroom</u>	<u>Unleased</u> <u>Loading</u> <u>Bridge</u>
Number of Times Used			
Current Fee	\$	\$	\$
Total Terminal Use Charges	\$======	\$======	\$======
(Joint Use Charge is ca	lculated based on	number of landing	s.)
3. AIRCRAFT PARKING	<u>Parkir</u> Occurre	<u>Total Hou</u> <u>Excess o</u> <u>Hours E</u>	urs in of 24 Each
Quantity			
Current Fee	\$	<u> </u>	
Total Parking Charges	\$=====	==== \$=====	====
The undersigned certifies that the above information, according to the books and records of the Airline, is correct and that he/she is a corporate officer of Airline or has been authorized to provide the above information by a corporate officer.			
Signature:		Title:	
Printed Name:		Date:	

City of Wichita City Council Meeting June 10, 2014

TO: Wichita Airport Authority

SUBJECT: UPS Supply Chain Solutions, Inc.

Cargo Building, Suite 900 Wichita Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the supplemental agreement.

Background: In June 2009, the Wichita Airport Authority (WAA) entered into an agreement with the UPS Supply Chain Solutions, Inc. (UPS SCS) to provide cargo operations at the multi-tenant cargo building located at 1935 Air Cargo Road, on Mid-Continent Airport. Four other tenants occupy the multi-tenant cargo building: Empire Airlines, Integrated Airline Solutions, United Airlines, and United Parcel Services. The term of the agreement expires May 31, 2014.

<u>Analysis:</u> UPS SCS is desirous of modifying the renewal options and exercising the first, three-year renewal option. Additional language has been added to the agreement, which will allow the WAA to cancel the agreement, without cause, by giving a 180-day written notice.

<u>Financial Considerations:</u> The facility rent for the use of 11,412 sq. ft. of first floor space is \$6.50 per sq. ft. and the use of the 422 sq. ft. of mezzanine space is \$3.25 per sq. ft. The combined annual revenue for the leased area is \$75,550.

<u>Legal Considerations:</u> The supplemental agreement has been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the supplemental agreement and authorize the necessary signatures.

Attachments: Supplemental Agreement No. 1.

SUPPLEMENTAL AGREEMENT NO. 1

By and Between

WICHITA AIRPORT AUTHORITY Wichita, Kansas

and

UPS SUPPLY CHAIN SOLUTIONS, INC.

for

Use of Space in Cargo Building, Suite 900 Wichita Mid-Continent Airport Wichita, Kansas

THIS SUPPLEMENTAL AGREEMENT NO. 1 is entered into this <u>June 10, 2014</u>, between The Wichita Airport Authority, Wichita, Kansas (LESSOR) and UPS Supply Chain Solutions, Inc., (LESSEE).

WHEREAS, the parties previously entered into an Agreement, dated April 14, 2009 for use of the Cargo Building located at 1935 Cargo Road, Suite 900, to be used and occupied for aviation purposes or purposes incidental or related thereto, with its business of air freight carrier and/or handling service at the Airport;

WHEREAS, the LESSOR and LESSEE now wish to enter into this Supplemental Agreement No. 1 for the purpose of exercising a lease renewal, modifying language and modifying the facility rent of this Agreement:

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, LESSOR and LESSEE do hereby agree as follows:

1. TERM

The term of this extension shall be for a three-year period, from June 1, 2014 through May 31, 2017.

2. RENEWAL OPTION

Article 4 – Renewal Options of this Agreement, dated April 14, 2009 shall be **replaced** with the following:

Lessee shall have and is hereby given the right and option to extend the term of this Agreement for up to three additional terms of three (3) years each, provided that (i) Lessee shall give Lessor written notice of its intention to exercise such option at least 180 days prior to the expiration of the previous term, and (ii) Lessee is not in default hereunder in the payment of rent at the time it gives Lessor such notice or at the time said additional term commences. In the event that Lessee fails to give required notice to Lessor, this Agreement shall automatically terminate at the end of the previous term of this Agreement.

In the event Lessee exercises any options for the additional terms, subject to the provisions for adjustment in rents, as set forth in Article 6, all terms, covenants, and provisions set forth in this Agreement shall be in full force and effect and binding upon Lessor and Lessee during such additional term(s).

3. FACILITY RENT

During this extension, facility rent shall be based upon the 11,412 sq. ft. of the first floor cargo building space at the annual rate of six dollars and fifty cents (\$6.50). In addition, the 422 sq. ft, of mezzanine space, which shall be 50% of the rate assessed for the first floor cargo building space; as a result, the annual rate of three dollars and twenty-five cents (\$3.25).

Therefore, the annual rent for the combined spaces, consisting of 11,834, shall be \$75,549.50, payable in monthly installments of \$6,295.79, due on the first day of each month during the term of this Supplemental Agreement No. 1.

4. CANCELLATION BY LESSOR

Article 31 of the original Agreement, dated April 14, 2009 shall be **added** as follows:

This Agreement may be cancelled by the LESSOR, without cause, by giving a 180-day written notice.

5. OTHER TERMS

It is understood and agreed that all other terms and conditions of the existing Agreement between the parties hereto are incorporated herein and reaffirmed.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

ATTEST:	THE WICHITA AIRPORT AUTHORITY WICHITA, KANSAS
By Karen Sublett, City Clerk	By Carl Brewer, President "LESSOR"
By Victor D. White, Director of Airports	
ATTEST:	
By	By UPS SUPPLY CHAIN SOLUTIONS, INC. "LESSEE"
APPROVED AS TO FORM: Director of Lav	

City of Wichita City Council Meeting June 10, 2014

TO: Wichita Airport Authority

SUBJECT: United Parcel Service

Cargo Building, Suite 1000 Wichita Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the supplemental agreement.

Background: The new multi-tenant cargo building opened in June 2009 and is located at 1935 Air Cargo Road on Wichita Mid-Continent Airport. There are five cargo building lease agreements for the tenants that occupy the 47,485 sq. ft. facility: Empire Airlines, Integrated Airline Solutions, United Airlines, United Parcel Services (UPS), and UPS Supply Chain Solutions. The term of the agreement expires May 31, 2014, and includes three successive, five-year options.

Analysis: UPS is now desirous of exercising the first, five-year option.

<u>Financial Considerations:</u> The facility rental rate for use of the space of 5,996 sq. ft. is \$10.05 per sq. ft., which provides annual revenue of \$60,260.

<u>Legal Considerations:</u> The supplemental agreement has been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the supplemental agreement and authorize the necessary signatures.

<u>Attachments:</u> Supplemental Agreement No. 1.

SUPPLEMENTAL AGREEMENT NO. 1

By and Between

WICHITA AIRPORT AUTHORITY Wichita, Kansas

and

UNITED PARCEL SERVICE, INC.

for

Use of Space in Cargo Building, Suite 1000 Wichita Mid-Continent Airport Wichita, Kansas

THIS SUPPLEMENTAL AGREEMENT NO. 1 is entered into this <u>June 10, 2014</u>, between The Wichita Airport Authority, Wichita, Kansas (LESSOR) and United Parcel Service, Inc., (LESSEE).

WHEREAS, the parties previously entered into an Agreement, dated April 14, 2009 for use of the Cargo Building located at 1935 Cargo Road, Suite 1000, to be used and occupied for aviation purposes or purposes incidental or related thereto, with its business of air freight carrier and/or handling service at the Airport;

WHEREAS, the LESSOR and LESSEE now wish to enter into this Supplemental Agreement No. 1 for the purpose of exercising the first, five (5)-year renewal, modifying the facility rent of this Agreement, and modifying additional terms as provided here;

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, LESSOR and LESSEE do hereby agree as follows:

1. TERM

The term of this extension shall be for a five-year period, from June 1, 2014 through May 31, 2019.

2. FACILITY RENT

During this five-year (5) extension, facility rent shall be based upon the 5,996 sq. ft, consisting of 5,312 sq. ft. of cargo building space and 684 sq. ft. of mezzanine space, which shall both be at the annual rate of ten dollars and five cents (\$10.05). This facility rent shall result in an annual payment of \$60,259.80, payable in monthly installments of \$5,021.65.

3. OTHER TERMS

It is understood and agreed that all other terms and conditions of the existing Agreement between the parties hereto are incorporated herein and reaffirmed.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

ATTEST:	THE WICHITA AIRPORT AUTHORITY WICHITA, KANSAS
By Karen Sublett, City Clerk	By Carl Brewer, President "LESSOR"
By Victor D. White, Director of Airports	
ATTEST:	
By	By UNITED PARCEL SERVICE, INC. "LESSEE"
APPROVED AS TO FORM: Director of Lav	